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A DIGEST OF STATE AIR POLLUTION LAWS
1962 EDITION

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A Digest of
STATE AIR POLLUTION LAWS

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A DIGEST OF STATE AIR POLLUTION LAWS

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Office of the General Counsel

1962 Edition

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Division of Air Pollution
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PREFACE

The enactment of State Air Pollution Legislation represents an attempt by the State legislature to provide the mechanism for attaining the goal of clean air necessary to protect the health and welfare of the State.

The variety of State enactments reflects various approaches to this end as well as differences in views as to the identification of the goal and its relationship to various aspects of the State's economy.

This digest presents in summary form the essential elements of State air pollution control laws to assist in the consideration of State air pollution control legislation, both existing and proposed. It was prepared with the assistance of the Office of the General Çounsel, U. S. Department of Health, Education, and Welfare, from an examination of State statutes enacted throughh the 1962 legislative session.

Also included is an introductory section entitled, "Guiding Principles -- State Air Pollution Legislation." It deals with the essential elements of air pollution control statutes and should help those charged with the responsibility of preparing new or revised legislation in this area.

The introduction is based on a presentation made October 22, 1959 at the 87th Meeting of the American Public Health Association, Atlantic City, New Jersey and later published in the February 1961 issue of the APHA Journal. The authors were Frank Tetzlaff, Samuel Rogers and Sidney Edelman.

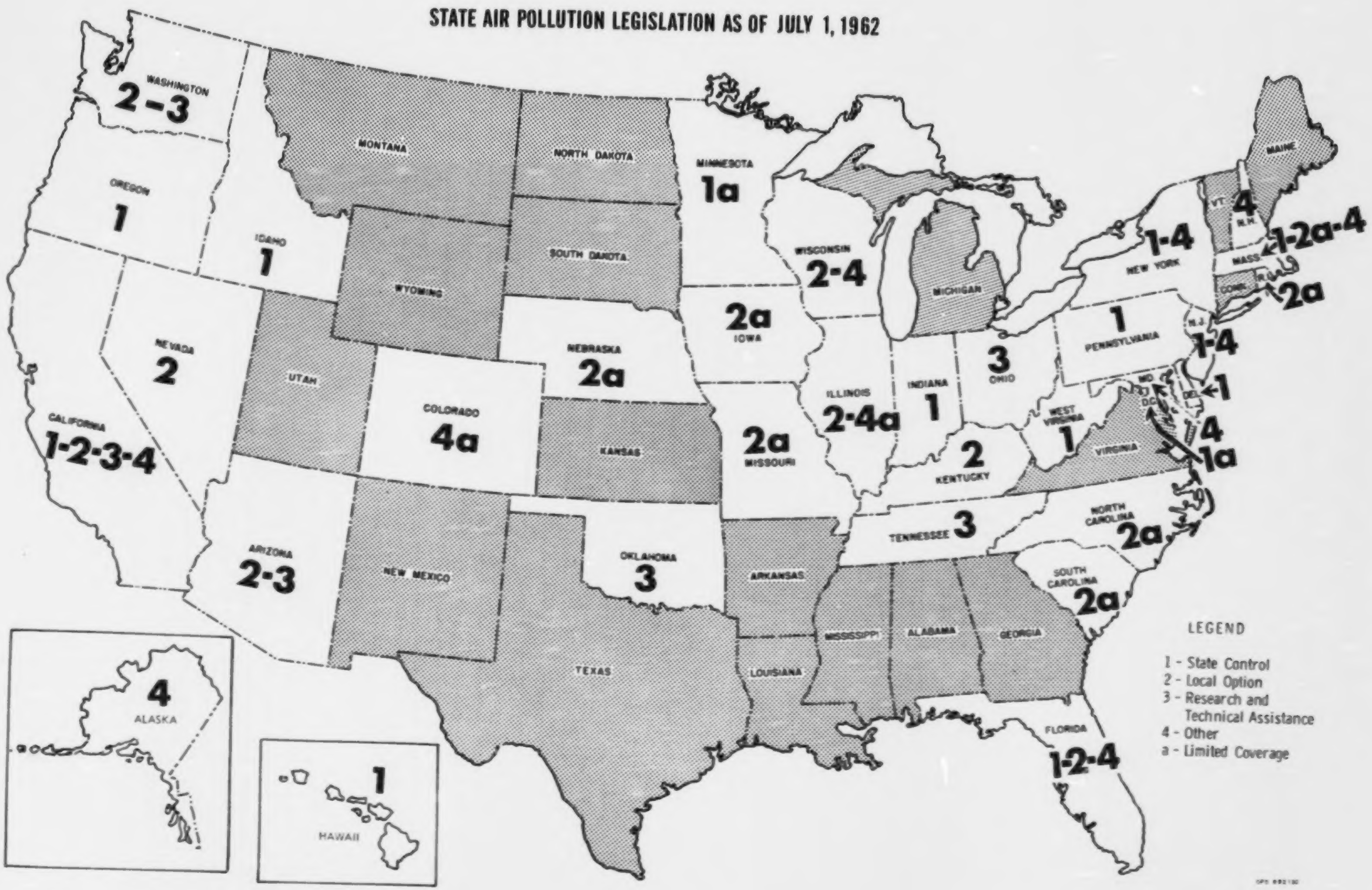
STATE AIR POLLUTION CONTROL LEGISLATION

	CONTROL	LOCAL OPTION	RESEARCH AND TECHNICAL ASSISTANCE	OTHER[2]
1. Alabama				
2. Arizona		X	X	
3. Arkansas				
4. California	X	X	X	X
5. Colorado				X[1]
6. Connecticut				
7. Delaware	X			
8. District of Columbia	X[1]			
9. Florida	X	X		X
10. Georgia				
11. Idaho	X			
12. Illinois		X		X[1]
13. Indiana	X			
14. Iowa		X[1]		
15. Kansas				
16. Kentucky		X		
17. Louisiana				
18. Maine				
19. Maryland				X
20. Massachusetts	X	X[1]		X
21. Michigan				
22. Minnesota	X[1]			
23. Mississippi				
24. Missouri		X[1]		
25. Montana				
26. Nebraska		X[1]		
27. Nevada		X		
28. New Hampshire				X
29. New Jersey	X			X
30. New Mexico				
31. New York	X			X
32. North Carolina		X[1]		
33. North Dakota				
34. Ohio			X	
35. Oklahoma			X	
36. Oregon	X			
37. Pennsylvania	X			
38. Rhode Island		X[1]		
39. South Carolina		X[1]		
40. South Dakota				
41. Tennessee			X	
42. Texas				
43. Utah				
44. Vermont				
45. Virginia				
46. Washington		X	X	
47. West Virginia	X			
48. Wisconsin		X		X
49. Wyoming				
50. Alaska				X
51. Hawaii	X			
52. Puerto Rico				
53. Virgin Islands				
54. Guam				

1/ Limited coverage

2/ Does not include authority to abate nuisances

STATE AIR POLLUTION LEGISLATION AS OF JULY 1, 1962


WASHINGTON 2-3
OREGON 1
IDAHO 1
MONTANA
NORTH DAKOTA
SOUTH DAKOTA
WYOMING
MINNESOTA 1a
WISCONSIN 2-4
MICHIGAN
NEW YORK 1-4
VT. 4
N.H.
MAINE
MASS. 1-2a-4
CONN.
R.I. 2a
PENNSYLVANIA 1
N.J. 1-4
DEL. 1
MD.
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4
1a
NEVADA 2
CALIFORNIA 1-2-3-4
UTAH
COLORADO 4a
NEBRASKA 2a
IOWA 2a
KANSAS
MISSOURI 2a
ILLINOIS 2-4a
INDIANA 1
OHIO 3
WEST VIRGINIA 1
VIRGINIA
KENTUCKY 2
TENNESSEE 3
NORTH CAROLINA 2a
SOUTH CAROLINA 2a
ARIZONA 2-3
NEW MEXICO
OKLAHOMA 3
TEXAS
ARKANSAS
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MISSISSIPPI
ALABAMA
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ALASKA 4
HAWAII 1
LEGEND
1 - State Control
2 - Local Option
3 - Research and Technical Assistance
4 - Other
a - Limited Coverage

INTRODUCTION

GUIDING PRINCIPLES -- STATE AIR POLLUTION LEGISLATION

In recent years, we have seen one after another of our fixed and unquestioned ideas give way to changes attributable to technical and industrial progress. Interplanetary travel and voyages of "Twenty Thousand Leagues Under the Sea" were forecast in fiction. Not many of us really expected these to become actual facts in our time. For a long time we gave little heed to the possibility that the forests and streams of our country were not inexhaustible. We obviously were too optimistic or too shortsighted, and now another of our natural resources is beginning to show signs of excess use. The air supply of our communities has been shown to be limited in its capacity to serve as a receptor for our air-borne waste products. We recognize it now as a limited resource and it is now known that abuse of our air supply can have harmful effects on health, comfort and property.

The nuisance aspect of air pollution, the noxious odors, the soiling of clothing and painted surfaces, and the tarnishing of new finishes on automobiles was perhaps the principal motivation for initial control efforts. More urgent and pressing and more obvious public health problems directed our attention to the sanitation of milk, food and water. It was to be expected, however, that an element which is used in such great quantities -- each of us daily uses some 15,000 quarts of air, ten times the weight of the food and water we consume -- could not escape sanitary surveillance indefinitely Air pollution control efforts, therefore, are now beginning to be based on the premise that no one has the right to use the atmosphere as a receptor of wastes in a manner which will adversely affect the health, comfort or property of others. It is recognized too that economic, social and technical factors are concerned in air pollution control efforts and must be considered in the application of controls and in the appropriate modification of such controls.

Since the end of World War II, the increasing interest in the conservation of our air resource has been reflected to some extent by the development of State legislation. Within the last decade, more than 20 States have modified or adopted new legislation on air pollution, and a total of 28 States now have such legislation. Legislative activity at the local level has also increased during this period, and at the national level, Congress has enacted legislation providing for the Public Health Service program of research and technical assistance in air pollution.[1]

It is generally accepted that responsibility for administration of a program for the prevention and abatement of air pollution should be at that level of government capable of dealing with the problem in its entirety. While this may indicate the desirability of air pollution control programs at a local or regional level, due consideration should also be given to the role of the State. It is essential that jurisdictional

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boundaries be established coincidental with natural geographical and topographical features which may affect air pollution conditions in any local area.

The goal of air pollution legislation should be to maintain a reasonable degree of purity of our air resources consistent with:

(a) public health and welfare;
(b) protection of plant and animal life;
(c) protection of physical property;
(d) visibility requirements for safe air and ground transportation;
(e) continued economic development and growth;
(f) maintenance of an aesthetically acceptable environment.

In programs at all levels of government, control can be most effectively brought about only by legislation which is reasonable and based on technically-substantiated criteria, which provides adequate flexibility, and yet is reasonably specific to meet the needs of the area under consideration. It should be adapted to the structure and practices of the government of the State or community. The legislation should clearly establish its scope, specifically assign responsibility and scrupulously avoid technical details, establishing the procedure by which such details are worked out, implemented, and revised to meet changing conditions. In this way a high degree of flexibility can be attained.

State air pollution control activity has developed traditionally from the authority of health departments to preserve public health. On the local governmental level, however, air pollution control authority has been vested in a variety of agencies, including health, building, fire, public safety, and other departments as well as air pollution control departments.

Early State statutes frequently provided an administrative approach which was largely negative in character. That is, when a particular activity was found to cause air pollution, the administrative agency was authorized to take steps to abate such pollution. Newer legislation shows a shift in emphasis from the abatement of existing air pollution to control through prevention.

Sufficient research and painstaking legal drafting effort to meet a common problem undoubtedly would result in statutes having considerable similarity. Some degree of uniformity is justifiable and even desirable. In the field of air pollution, however, perhaps more than in any other problem of the environment, the causes of air pollution and the topographic, meteorologic, economic, social and health factors provide such a wide range of variables that a variety of statutory approaches is inevitable.

A review of existing State air pollution legislation reveals that certain principles appear to be basic for the development of such legislation. While these guiding principles pertain principally to State-level legislation, they may also be applicable, with suitable modification, to local and regional legislation. They may be useful to State, regional, and local authorities in appraising their air pollution statutes and evaluating them in terms of their actual air pollution problems and the present status of technical knowledge. In this connection it is well to recognize the need to facilitate home rule and thereby provide greater flexibility in meeting local problems. Similarly, the regional approach merits consideration where the use of traditional municipal corporate or county lines creates extraordinary complications when an effort is made to develop an integrated air pollution program for a metropolitan area. These principles may be described as follows without attempting to describe the steps to be taken in the actual preparation of State or local regulations for the control of air pollution since these have been well described elsewhere.[2]

A. Definitions

A definition section is an integral part of a comprehensive air pollution statute. This section is important in the administration and interpretation of the statute. Unduly restrictive or vague definitions should be avoided. It is desirable that the definitions be limited to special or new terms or special use of common words. There is no obvious need to include definitions of a large number of scientific terms that are widely used and accepted in scientific circles. The definition of the term "air pollution" is the most important one in a statute and should be broad enough so that control efforts will protect all the air resources of the State. "Air pollution" may be defined as the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration which are or may tend to be injurious to human, plant, or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property, or the conduct of business. This language makes it unnecessary to show that life or property already have been injured or that their comfortable enjoyment already has been unreasonably disturbed, so long as the pollution situation is generally known to effect those results. The definition encompasses the preventive and abatement aspects. Similarly, the definition of "person" should not be restrictive, but should include the State, any municipality, county, public or private corporation, partnerships, firm or other entity or individual.

B. Administrative Agency

The administrative aspect is probably the key to the entire Act, since it spells out the means by which the Act will be rendered effective. It is in this area that the greatest variations between States and communities might be expected to occur.

(1) In legislation which would authorize a State-wide air pollution control program, it is essential that there be a specific designation of an agency responsible for the administration of the program. The problems of air pollution control concern interests other than health. Consequently, the agency established or designated to administer the program should be so constituted as to take into account the interests and views of all affected groups, in addition to public health considerations.

Some States which have recently enacted air pollution control legislation have entrusted its administration to a board or authority, in the State health department, representative of the interests considered to be affected. Such boards are sometimes made up of representatives of various departments of the State government, sometimes of citizens from outside the government, and more frequently, a combination of the two.[3] The adoption of this procedure has the advantage of facilitating representation of affected interests in the agency. These bodies, among other activities, may promulgate codes, rules and regulations, which are enforced by the State health department or by the body itself.

It may be considered desirable to vest responsibility for the program in a single administrator, such as the State health officer.[3] If this is done, it would seem advisable to provide representation of affected interests through an advisory council. It is desirable, regardless of the type of administrative agency, that the creation and organization of an advisory council should be included in the legislation. Because the council will have technical advisory responsibilities, it is best that its duties be defined in broad terms in the legislation. More specific description of the duties can be developed in the regulations if deemed necessary.

A procedure should be established for appealing administrative orders or relief from regulations deemed too restrictive. The constitution and authority of the appeal board should be stated and provision should also be made for appeal from any final order or other final determination of the agency to a court of competent jurisdiction.

Where a State air pollution control agency is to be established in an existing department, it is obviously desirable that it be placed in a department having competency in terms of experience, personnel and facilities.

(2) Many of the acts confer on the air pollution control agency concerned the requisite administrative powers to carry out its responsibilities. Thus, the agency is empowered to hold hearings, subpoena witnesses, enforce its subpoenas, administer oaths, examine plans and specifications, require the keeping of records and making of reports, promulgate rules and regulations and enter on property at reasonable times for purposes of inspection and investigations. Procedures of entry and inspection must be described fully. The right of inspection is essential, but inspection procedures should be as reasonable as possible.

C. Air Classification - Air Quality Standards

Some State air pollution control agencies are authorized to divide the State into areas according to prevailing land use with standards of air quality for the designated areas being set in accordance with such use.[3] Classification of areas and establishment of standards are considered by some authorities to be essential elements of any comprehensive program of this type. In other cases the agency may be given broad authority to develop and publish standards for the quality of the air. Such standards are expected to reflect the relationship between the intensity and composition of air pollution and its effect on health, including irritation to the senses, and comfort of human beings, as well as damage to plant and animal life and property, and interference with visibility.

The classification of areas and the promulgation of emission limitations have a definite legal effect and their violation is made unlawful; conversely, discharges which comply with such classification standards are not pollution within the meaning of the statute. In view of the number of persons affected by classifications and standards, the statutes usually require that their adoption be preceded by a public hearing open to all residents of the areas affected, and that adequate notice be given. Such statutes also provide that in the classification of areas, and the establishment of standards, the administrative agency would be guided by the principle of constantly seeking to improve the air quality to the maximum extent practicable.

Many of the State air pollution statutes, other than the technical assistance and research type, give the responsible agency the power to promulgate implementing rules and regulations for the prevention and abatement of air pollution. In this connection, the enforcement powers are not usually held in abeyance until such action can be completed. All States have some procedural requirements to be observed in the promulgation of rules and regulations. In a growing number of States, largely due to the influence of the provisions of the Federal Administrative Procedure Act, statutes have been adopted establishing certain procedures prior to adoption of regulations by State agencies.[4] Occasionally, the statutes may provide exceptions to these procedures in cases of emergency which may involve the public health, safety, or general welfare.

Standards, codes, rules and regulations governing the emission of air pollutants should be based on technically accepted criteria. The setting of these standards requires also that consideration be given to local conditions, such as topography, meteorology, industrial development, degree of urbanization, aesthetics, and land use planning. Permissible levels of air contaminants should be approached with due consideration to the desires of the area and the economics involved, especially where health effects are not clearly indicated.

D. Permits - Registration

A permit system provides a technique for the control of air pollution under which prior agency approval of plans, specifications and other data for new construction or alterations is required. Approval is given only if the controls to be provided are, in the judgment of the agency, adequate to meet the requirements on the emission of air pollutants.

Such approval does not, of course, necessarily guarantee that the completed installation will be efficiently operated or that it will perform in accordance with its design specifications.

There are some, however, who prefer a procedure which requires registration of all sources of regular or anticipated emissions above some minimum size. It should be recognized that a permit program does involve an administrative responsibility of considerable magnitude. The proponents of a registration program believe that knowledge of location and nature of sources of air pollution, with opportunity to inspect, will provide as good a foundation for control as a permit program. It is further claimed that the only advantage of permits over registration is that abatement is simpler by withdrawal of the permit than by petitioning a court for an injunction, an advantage which to some is counterbalanced by the administrative burden of equipment approval. The possible combined use of permit and registration systems might, in certain cases, prove desirable.

E. Enforcement

Statutes now in effect provide a variety of methods for proceeding against any alleged polluter. It is made unlawful to cause any pollution of the air in the area of jurisdiction in terms of the definition of air pollution, or to violate any order issued by the agency, including an order classifying areas of the jurisdiction or establishing limitations on emission of air pollutants. In some cases, air pollution is declared to be a public nuisance and is therefore subject to abatement in accordance with the practice for abatement of nuisances.

In this connection, the concept is being more generally accepted that the police power of the State and properly authorized local government extends to the regulation of air pollution without regard to whether the condition constitutes a common law or statutory nuisance. The validity of a statute or ordinance regulating the emission of pollutants does not depend on whether or not it is in fact a nuisance. Nor does it add to the validity of the legislation to declare that such emission constitutes a public nuisance.

The criteria used to judge the validity of a statute regulating conduct which does not constitute a common law nuisance are those applied to determine the proper exercise of the police power; namely, that the statute is reasonably necessary for the accomplishment of the purpose and for the public welfare, is not unduly oppressive, does not arbitrarily interfere with private property or impose unnecessary restrictions upon its use.

The violation of the provisions of such statute, or order, or a determination by the agency of failure to perform any duty imposed by the statute is declared to be a misdemeanor. The principal method of making an air pollution control program effective through the compulsory process, however, is by administrative action. The control agency is empowered to issue orders against alleged polluters after adequate opportunity for hearing. Such orders, if not appealed through the courts, become final and are enforceable in much the same way as a judgment of a court. The same administrative procedure, a hearing, is employed in the case of revocation, denial, or modification of permits.

Many of the statutes provide that appeals may be taken to the courts from orders of the control agency. Such appeals do not generally involve trial *de novo*, but are primarily reviews of the legal propriety of the agency's decision. If the prescribed statutory procedure has been followed and the determination is supported by substantial evidence, the order of the agency will usually be affirmed by the court. On the other hand, in a trial *de novo* the court is authorized to exercise its independent judgment on the evidence and to make an independent determination of the reasonableness and legality of action on all issues of law, facts, and mixed questions of law and facts and opinions therein involved.

It should be noted that there is growing support for the view that the test for air pollution as it relates to health should not be limited to conditions which actually or inevitably result in disease or damage, but should include those conditions which create a hazard, danger, or peril to the public health.

F. Severability

A severability clause is usually included to provide that if any part of the statute is declared unconstitutional, the other parts shall continue in force and effect.

More recently-enacted State statutes have been of three general types or combinations of these types, i.e.:

(A) A law providing for the prevention and abatement of air pollution problems in all areas of the State.
(B) A broad enabling act permitting the establishment of air pollution control districts by local option.

(C) A law providing for a research and technical assistance program.

A. State Air Pollution Control Legislation

Limited operational experience indicates that such legislation may:

(a) Provide the basis for establishing the organization of the air pollution control agency and for the recruitment of personnel.

(b) Authorize the utilization of personnel and facilities of other State agencies and reimbursement therefor.

(c) Provide the basis on which the agency can plan a comprehensive program taking into account the varying conditions of different areas of the State.

(d) Provide the agency with the authority for the promulgation of rules and regulations based upon needs as determined on the basis of appriate surveys and hearings before such promulgation.

(e) Provide for the solution of local or regional air pollution problems by authorizing the formation of local and regional air pollution control organizations.

(f) Provide that nothing in the legislation should impair or abridge the power of any local or regional air pollution control agency to promulgate rules and regulations whether they be the same or more stringent than those promulgated by the State agency.

(g) Authorize the State agency to take action in the absence of, or failure of, a local or regional control agency having jurisdiction to control air pollution, and to resolve interjurisdictional disputes.

(h) Authorize the agency to establish appeal or hearing procedures for cases resulting from direct action of the agency.

(i) Authorize the agency to conduct a research program on air pollution and conduct field studies and investigations related to air pollution as it may deem necessary.

(j) Authorize the agency to collect and disseminate information relating to air pollution and its prevention and control

(k) Authorize the agency to provide technical assistance and cooperation to local control programs, industry, and other affected groups.

(l) Authorize the agency to receive or initiate complaints and to take the necessary action, after a public hearing, for the abatement of air pollution and establish a penalty for failure to comply with orders of the agency.

(m) Make clear that all causes and effects of air pollution are included within the area of responsibility of the State agency. In addition to health effects, these would include the effects on plant and animal life, on structural material and surfaces, and on visibility particularly as it affects air and surface transportation.

(n) Authorize the agency to cooperate with appropriate agencies of the United States or other States or any interstate agency or international agency with respect to the control of air pollution.

(o) Authorize the agency to serve as the agency of the State for the acceptance and financial administration of monies from the Federal government or other public or private agencies.

B. Local Option Legislation

The effectiveness of local option type legislation is enhanced when the State agency is authorized to take the necessary steps to resolve interjurisdictional air pollution problems. In addition, authority should be granted to the State to deal with those problems beyond the jurisdictional limits of a community. Another provision which has proven useful is the authorization for political subdivisions within the State to enter into agreements or contracts with each other to carry out such functions which might better be performed by them in concert. Interlocal agreement may also be considered for use by communities whether or not they are located within a single State.

Legislation of this type may:

(a) Provide the procedure by which, and conditions under which, a district may be activated and organized involving one or more cities or counties and the formation of metropolitan authorities.

(b) Provide for the names and the general and specific powers of the district.

(c) Provide for an air pollution control board and hearing board for each district and the duties of such boards.

(d) Provide for the appointment, powers and duties of officers and employees of the district.

(e) Authorize appropriations to the districts by counties and cities comprising such district.

(f) Provide for standards for the control or prohibition of obvious pollution and prohibiting pollution which may be either actually or potentially harmful to persons or property. During an emergency, such as may develop under adverse meteorological conditions, short-time curtailment of community and industrial activities which contribute to pollution may be necessary. Although such an emergency condition is seldom encountered, it is essential that duly-constituted governmental authority anticipate such a problem, and be prepared to act through a prearranged procedure.

(g) Provide for injunctive relief against certain violations, and for criminal and civil penalties.

(h) Provide for appeals to appropriate courts on the basis of existing statutes.

C. Research and Technical Assistance Legislation

Legislation of this type usually provides the following:

(a) Authority for the conduct of studies to determine the effects of air pollution upon human, animal and plant life, and upon materials and related matters.

(b) Authority to maintain a laboratory to provide services necessary for the abatement and control of air pollution.

(c) Authority to conduct such research as may be necessary.

(d) Authority to determine by means of study those factors responsible for air pollution.

(e) Authority to develop and maintain a system of monitoring the atmosphere for purposes of determining the presence and quantity of air pollutants.

(f) Authority to assist local and regional agencies by means of cooperative activities and consultation.

(g) Authority to collect and disseminate information relating to air pollution and for the prevention, control, and abatement thereof.

(h) Authority to accept and administer grants from the Federal government and other sources, public or private, for carrying out any of the functions indicated above.

Air pollution legislation must have a generally accepted reason for being. The rules of conduct established by the authority, legislation or custom of a State or community are the basis of our laws. An essential condition for their being laws in fact, however, is that they are enforced. Unless laws are to be enforced, they should not be enacted. No two States or communities are alike in the extent to which air pollution may constitute a problem of the environment requiring control. If air pollution legislation is required, it should be made to fit the problem and to fit the objectives of the State or local authorities and the people they serve. Any effective law results in disadvantages to some individuals. These disadvantages should be foreseen and weighed against expected benefits and suitable and acceptable compromises made in the air pollution legislation which is adopted. Enforcement then should prove to be more readily feasible and result in control of air pollution to the extent necessary to maintain the fitness of the air environment.

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DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Alabama

"§ 75. The following things, conditions and acts, among others are declared to be public nuisance per se, menacing public health and unlawful: ***

"(5) Such . . . acts, things or conditions as may from time to time be by the rules and regulations of the State board of health declared to be public nuisances per se menacing public health.

"(6) The ownership, possession, management, control, maintenance, permitting or use of any of the things or conditions described or referred to . . . in any rule or regulation adopted under subdivision 5 of this section.

"(7) The conducting of a business, trade, industry, or occupation, or the doing of a thing, not inherently insanitary or a menace to public health in such a manner as to make it a menace or likely to become a menace to public health.

"§ 76. Any such nuisance shall be abated by the county board of health . . ."

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[1] Citations in this digest refer to Code of Alabama, Recompiled 1958, Title 22

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Alaska

Chapter 9 of Title 40 /Health and Safety/ is entitled "Pollution of Waters or Air." Sections 2 and 3 thereof declare it to be a public nuisance punishable as a misdemeanor with a fine of not less than $10 nor more than $50 or imprisonment from 5 to 25 days or both for failure to abate any nuisance . . . . which would be obnoxious to the public or cause the spread of disease.

In 1959, the Department of Fish and Game of Alaska is directed to initiate and pursue continuing studies, particularly with respect to, inter alia, the protection of airspace from pollution, as to the need for changes in the laws and regulations administered by it that would arise from the presence within the State of special nuclear, by-product, and radioactive materials, from the operation in Alaska of production or utilization facilities, and from the generation of radiation, and, on the basis of such studies, to make such recommendations for the enactment of laws or amendments to law administered by it, and such proposals for amendments to the regulations issued by it as may appear necessary and appropriate. /§ 40-2B-4 (7)/

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[1] Citations in this digest refer to Alaska Compiled Laws Annotated 1949.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS

Arizona

1. Air Pollution Control

General Statement: In 1962, the Arizona Legislature amended Title 36, ch. 6 of the Arizona Revised Statutes by adding a new article 8 entitled "Air Pollution". This amendment authorized county boards of supervisors to adopt air pollution control regulations and to establish air pollution control districts. The State department of health was also authorized to make studies of air pollution at the request and expense of a county (Ch. 121, Laws 1962).

> Air pollution is defined as: "the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant or animal life, or property." (Section 36-771)

I. State Assistance

The department of health may make studies of the nature, extent, distribution and sources of air pollution and possible control thereof within any county so requesting and at the expense of such county. In carrying out such studies, the department is authorized to enter into cooperative agreements with public and private agencies, educational institutions and county and municipal governments. (§ 36-772)

II. County programs

A. Air pollution study board of supervisors.

A county board of supervisors may, within its territorial limits:

1. Investigate the causes, source, extent and degree of air pollution, including studies of devices to reduce air pollution from motor vehicles.
2. Adopt rules and regulations to abate or prevent air pollution "in all its forms, including smoke, vaoprs, dust, wind-borne matter, fumes, radioactive materials" originating within the county.
3. Designate on existing county department, or establish an air pollution control district, to carry out investigations and inspections and to enforce rules and regulations. (§ 36-773)
4. Establish an air pollution control district (§ 36-774.5)

B. County Health Department

The county board of supervisors may authorize the county health agency, in cooperation with the state department of health, to study the county air pollution problem and its possible effects on adjoining counties, cooperate with public or private agencies and all other interested persons, and in its discretion, hold public hearings. (§ 36-774)

C. Powers and duties of air pollution control district.

A district is granted perpetual succession, and it may sue and be su name, adopt a seal, take, hold, use land dispose of real or personal property within or without the district as may be necessary for carrying out its purposes. (§ 36-775)

III. Acceptance of funds or grants

The State department of health, county health departments, or board of supervisors, may accept and expend funds granted for air pollution research by Federal State or private agencies, or political subdivisions of the State.

IV. Effective date

These provisions became effective March 27, 1962.

2. Nuisance Provisions[1]

Section 9-276 provides:

"In addition to the powers already vested in cities by their respective charters and by general law, cities and their governing bodies may:

* * *

"16. Define nuisances and abate them, and impose fines upon persons creating or continuing nuisances."

Section 13-601 provides:

"Anything which is injurious to health or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by a considerable number of persons . . . is a public nuisance, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal."

Section 13-602 provides:

"A. A person who maintains or commits a public nuisance, the acts and punishment for which are not otherwise prescribed, is guilty of a misdemeanor.

"B. A person who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor."

Under § 36-162, providing in pertinent part that county boards of health shall have such powers within their respective counties and outside the corporate limits of cities having a city board of health as are granted the State board of health and the State department of health subject to supervisory control by the State board, such boards of health may abate nuisances.

Section 36-167 provides:

"A. Each city or county board of health shall within its jurisdiction examine into all nuisances . . . and causes of sickness and make regulations necessary for the public health and safety of the inhabitants.

"B. . . . (Notice by publication of regulations.)

"C. A person violating a published order or regulation of a board of health is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars, imprisonment for not more than thirty days, or both."

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[1] Citations refer to Arizona Revised Statutes Annotated

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Arkansas

The Governor may require the State Board of Health to examine into nuisances affecting the health in any locality. Conditions certified by the State Board of Health to be a nuisance may be declared by the Governor to be public nuisances and he may order them to be changed, abated or removed. Any violation of such an order is punishable as a misdemeanor.

Any board of health of any city may appoint one of its officers as representative during the examination by the State Board of Health of an alleged nuisance and may take part in the deliberations but may not vote [§§ 82-112 and 82-113].

In 1953 the Arkansas legislature directed the Geological and Conservation Commission with respect, inter alia, to the protection if necessary of airspace from pollution to initiate and pursue continuing studies as to the need, if any, for changes in the laws and regulations administered by it that would arise from the presence within the State of special nuclear and by-product materials and from the operation in Arkansas of production or utilization facilities, and, on the basis of such studies, to make such recommendations for the enactment of laws or amendments to law administered by it, and such proposals for amendments to the regulations issued by it, as may appear necessary and appropriate. [§ 82-1402.(g)]

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[1] Citations refer to Arkansas Statutes 1947 Annotated and Vol. 7A-1960 Replacement.

DIGEST OF AIR POLLUTION CONTROL LAWS [1]

California

1. State Department of Public Health

Article 9, Chapter 2, Part 1, Division of the Health and Safety Code gives the State Department of Public Health certain duties with respect to air pollution. They include research, establishment of standards, monitoring air pollution, and assistance to local agencies.

A. Research

The Department is required to:

1. Conduct studies to determine health effects of air pollution.
2. Determine physiological effects of air pollution on plant and animal life.
3. Determine factors responsible for air pollution.
4. Monitor the concentration of pollutants in the air.
5. Develop administrative procedures for control of air pollution in emergencies.
6. Assist local agencies in air pollution activities.

The Department of Public Health may enter into agreements with any public or private organization, agencies or individual as may be deemed necessary to carry out its functions.

B. The State Department of Public Health was directed, prior to February 1, 1960, to:

1. Develop and publish standards of quality for the air of the State. The standard shall "reflect the relationship between the intensity and composition of air pollution and the health, illness, including irritation to the senses, and death of human beings, as well as damage to vegetation and interference with visibility" (§ 426.1, Health and Safety Code).

2. Determine the maximum allowable standards of emission of exhaust contaminants from motor vehicles "compatible with the preservation of the public health including the prevention of irritation to the senses, interference with visibility and damage to vegetation." (§ 426.5, Health and Safety Code).

Both standards shall be developed after holding hearings with public notice and opportunity for interested persons to be heard. The department, after notice and hearing, may revise both standards from time to time. In revising motor vehicle exhaust contaminant standards after February 1, 1960, the department shall take into account all emission from motor vehicles rather than exhaust emissions only.

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[1] Citations refer to West's Annotated California Codes, Health and Safety Code and 1961 Cumulative Pocket Part. Deering's California Codes Annotated contains parallel citations.

C. Motor Vehicle Pollution Control [1]

I. General Statement

The Legislature having found that the emission of pollutants from motor vehicles is a major contribution to air pollution in many parts of California, that their control and elimination is important for protection of public health, prevention of irritation to the senses, interference with visibility, and damage to vegetation and property, and that the Department of Public Health had established standards pursuant to §§ 426.1 and 426.5 (see above), enacted a motor vehicle pollution control law to establish uniform procedures for compliance with these standards. The law establishes a Motor Vehicle Pollution Control Board to pass upon motor vehicle pollution control devices, which became mandatory, as provided, after two have been approved (§§ 24378, 24383, 24386, 24389 et seq.).

II. Administrative Organization

A. Motor Vehicle Pollution Control Board

A Motor Vehicle Pollution Control Board, responsible directly to the Governor, is established in the State Department of Public Health, which provides the Board with administrative services. It is composed of 13 members who serve without compensation, nine appointed on four year staggered terms by the Governor with the consent of Senate, the other four being the Directors of Public Health, Agriculture, Motor Vehicles, and the Commissioner of the California Highway Patrol. Appointments are made so as to secure representation for interested groups including agriculture, labor, organizations of motor vehicle users, the motor vehicle industry, science, air pollution control officials, and the general public. The Board annually selects its chairman and vice-chairman from the Governor's appointees (§§ 24383, 24384, 24385).

B. Powers and Duties

1. To adopt rules and regulations in accordance with the Administrative Procedures Act.

2. To employ necessary technical and other personnel.

3. To determine and publish criteria for approval of motor vehicle pollution control devices, taking into consideration cost of the device and its installation, its durability, the ease of determining whether when installed it is properly functioning, and other factors which render it suitable for control of motor vehicle air pollution or for public health, safety and welfare.

4. To issue certificates of approval for laboratory tested devices complying with standards issued in accordance with § 426.5 and criteria adopted under II. B. 1, 3, above.

5. To exempt from compliance vehicles which meet state standards without requiring additional equipment, and certain other categories of vehicles (§ 24386).

6. To submit a report to the Governor and Legislature at each legislative general session covering recommendations for necessary legislation and action of implementation or enforcement (§ 24386.5).

7. To adopt regulations specifying procedure for submission of motor vehicle pollution control devices for testing and certification (§ 24387)

8. To certify to the Department of Motor Vehicles when two or more devices have been approved. This establishes the certification date. (§ 24388)

9. All meetings of the Board shall be public and open to attendance by all persons (sec. 24385.5)."

III. Compliance

A. Prohibitions

1. Unless equipped with a certified device:

a. No new motor vehicle shall be registered after one year after the certification date;

b. No used motor vehicle upon transfer of registered owner shall be registered after one year after the certification date when located in a county where this section is operative (see III. B, below) (§ 24391);

c. No used commercial vehicle shall be registered after the second December 31 following the certification date when its principal location is a county where this section is operative (see III. B, below) (§ 24392).

2. No motor vehicle shall be registered after the third December 31 following the certification date when principally located in a county where this provision is operative (§ 24393).

3. No person shall sell, display, advertise, or represent as certified a device not certified. After the certification date no person shall install or sell for installation an uncertified device (§ 24395).

B. Exemptions

1. The board of supervisors of any county not within an air pollution control district or if part is within such a district, for that part not so located, or the governing body of any air pollution control district may determine that §§ 24391, 24392, and 24393 are unnecessary within that county, part of county, or district, after holding a public hearing to determine the existence and extent of motor vehicle created air pollution within the area applying State standards, by determining to render the sections imperative, so resolving, and filing a copy of that resolution with the Board and the Department of Motor Vehicles (§§ 24394 (a), (b), (c)).

Every county or district in which (§§ 24391, 24392, and 24393 are not operative shall hold a hearing at least every two years and after such hearing, if it determines that these sections should again become operative, shall so resolve and file a copy of the resolution with the Board and the Department of Motor Vehicles (§§ 24394 (d)).

Notice of each public hearing shall be published twice in a newspaper of general circulation in each affected county not less than 15 or more than 45 days before the hearing (§ 24394.3).

C. Penalty

Any violation of this part is a misdemeanor (§ 24396).

IV. Authorized Motor Vehicle Pollution Control Testing Laboratories

The Board designates qualified and equipped laboratories to analyze and determine, on the basis of Board standards, devices which are designed and equipped to meet State standards and Board Criteria (§ 24398).

The Board is authorized to contract for the use of, or performance of tests or other services by any laboratories (§ 24398).

V. Vehicle Code Amendments

1. Driving, moving or leaving standing upon a highway any motor vehicle registered in violation of the motor vehicle pollution control law is prohibited (Vehicle Code, § 4000).

2. The Department of Motor Vehicles must refuse registration or renewal or transfer if prohibited by the motor vehicle pollution control law (Vehicle Code, § 4750).

3. No motor vehicle required to be equipped with a certified device may be operated unless so equipped with a device correctly installed, properly maintained, and not modified or altered so as to decrease its efficiency or effectiveness (Vehicle Code, § 27156).

4. Knowingly making a false or fraudulent statement on an application for registration, renewal, or transfer of a motor vehicle is a misdemeanor (Vehicle Code, § 40004).

1/ This law, Chapter 3 (commencing at Section 24378) to Division 20 of the Health and Safety Code was added by Stats. 1960, ch. 23, approved April 14, 1960. References are to sections of the Health and Safety Code.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

California

2. Air Pollution Control Districts

I. General Statement

The Air Pollution Control District Act, enacted in 1947, establishes statewide standards for air pollution control with enforcement on a county basis at local option.

Air contaminant is defined to include "smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof" (§ 24208). The statute prohibits the discharge of contaminants:

(1) for periods in excess of 3 minutes in any one hour which is as dark or darker than Ringelmann No. 2 or has the same or greater opacity as Ringelmann No. 2 (§ 24242).

(2) which may cause injury or annoyance to the public, or endanger the comfort, health or safety of a person or cause or tend to cause injury to business or property (§ 24243).

The statute creates in each county an air pollution control district (§ 24200), except that in a unified district each county is a zone of that district (§ 24333).

II. Administrative Organization

A. Establishment of county air pollution control districts.

An air pollution control district is established in each county (§ 24200) with boundaries coextensive with the county (§ 24201) or, in districts formed by two or more contiguous counties, with boundaries the same as those of the several counties of which it is comprised (§ 24330 and 24332).

B. Authorization of districts to function:

Air pollution control districts are authorized to function only after a resolution by the appropriate county board of supervisors declaring that there is need for an air pollution control district to function in the county (§ 24202) or after ratification by the boards of supervisors of two or more counties of the agreement of their representatives to form a unified district (§ 24331).

The resolution is authorized only if, from evidence received at a public hearing (§ 24203) as to which required public notice has been given (§ 24204), it is found that there is need for a district to function because:

1. The air within the county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with comfortable enjoyment of life or property.

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[1] West's Annotated California Codes, Health and Safety Code and 1961 Cumulative Pocket Part, as amended. Deering's Calif. Codes Annotated contained parallel citations.

2. It is not practical to reply upon the enactment or enforcement of local county and city ordinances to prevent or control the emission of smoke, fumes or other substances which cause or contribute to such pollution (§ 24205).

C. Powers.

Upon adoption of the resolution the district has the following powers:

1. To have perpetual succession.

2. To sue and be sued.

3. To adopt a seal and alter it.

4. To take by grant, purchase, gift, devise or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.

5. To lease, sell or dispose of any property when such property is no longer required for the purposes of the district or may be leased for any purpose without interfering with the use of the same for the purposes of the district and to pay any compensation received therefor into the general fund of the district (§ 24212).

D. Air Pollution Control Board.

1. Organization and composition

The board of supervisors of a county are, ex officio, the air pollution control board of the air pollution control district in such county (§ 24220) and the boards of supervisors of the zones comprising a unified district are, ex officio, the air pollution control board of the district (§ 24335).

2. Duties and powers

a. The air pollution control board may make, enforce and perform all other acts necessary or proper to accomplish the purposes of the Act for the administration of the district (§ 24260). It may take steps to reduce the amount of air contaminants released in the district if it finds that the air is so polluted as to cause any discomfort or property damage at intervals to a substantial number of persons in the district (§ 24262).

b. Such orders, rules and regulations may be made only after a public hearing of which the required public notice has been given (§ 24261).

c. The board may require by regulation that before any person builds, erects, alters, replaces, operates, sells, rents, or uses any article, machine, equipment or other contrivance specified by such regulation the use of which may cause the issuance of air contaminants, such person must obtain a permit to do so from the air pollution control officer (§ 24263) but is to be allowed a reasonable time within which to apply for a permit and to furnish the air pollution control officer required information.

The board may by regulation establish standards of performance for any equipment or method specifically designed or intended for use upon any motor vehicle as defined in the Vehicle Code to control the issuance of air contaminants and may prohibit the sale of such equipment until the air pollution control officer has approved it and issued a permit authorizing its sale (§ 24263.7). However, no permit is needed for any vehicle as defined in the Vehicle Code (S B 503 -- 1957). Statutory exemptions to such requirements are (1) mobile equipment, (2) dwellings for not more than four families, (3) an incinerator or barbecue equipment used exclusively in connection with such a dwelling, (4) repairs or maintenance not involving structural changes to any equipment for which a permit has been granted, (5) use of equipment in agricultural operations in the growing of crops or raising of fowls or animals, (6) use of an orchard or citrus grove heater which does not produce unconsumed solid carbonaceous matter at a rate in excess of one gram per minute except that the air pollution control board of any county, any part of which lies south of the Sixth Standard Parallel South, Mount Diablo Base and Meridian may at its discretion require operators of grove heaters to obtain permits. In no event may such operator be denied a permit if such heaters produce unconsumed solid carbonaceous matter at the rate of one gram per minute, or less (§ 24265).

d. The air pollution control board may contract with the county or any city within the district and the county and any such city may contract with the air pollution control district for assistance in regulation of installations which may issue air contaminants (§ 24266).

e. The air pollution control board appoints an air pollution control officer (§ 24222) and may provide for him to employ assistance (§ 24223). His duties are to enforce the provisions of the statute, orders, regulations and rules of the air pollution control board, all variance and standards prescribed by the hearing board (§ 24224) and all provisions of the Vehicle Code regarding control of air contaminants. In counties having a civil service system the air pollution control officer and all of his assistants are to be appointed pursuant to civil service provisions (§ 24228). In the enforcement pursuant to (§ 24224) the air pollution control officer is a peace officer (§ 24231). He may enter buildings to enforce pertinent provisions of the Vehicle Code as well as this Act (§ 24246). He is immune from criminal prosecution for acts done in the performance of official duty (§ 24254).

f. The air pollution control board appoints a three-member hearing board. No member may be otherwise employed by the air pollution control district or by the county. Two must have been admitted to practice law in California and one must be a chemical or mechanical engineer (§ 24225). The members serve staggered terms of three years each after the termination of the original term (§ 24226).

E. Financing

1. The board of supervisors of a county in which an air pollution control district has been activated may appropriate funds to such district to be deposited in the treasury of the district (§ 24209) and the board of supervisors of each zone in a unified district is to appropriate necessary funds as determined by the air pollution control board (§ 24337) to be deposited into the district treasury (§ 24339).

2. Fees

   a. The air pollution control board may provide a schedule of fees for the cost of issuing permits and inspection (§ 24267). The fees may be paid to a city or officer or agency thereof when a contract for assistance has been made or into the district treasury (§ 24268).

   b. The air pollution control board may provide a schedule of fees for the cost of handling variance orders (§ 24293). Such fees are to be paid into the district treasury (§ 24294).

III. Prohibited Emission: Operations Exempted

A. Prohibited emissions (Article 3)

1. A person shall not discharge into the atmosphere from any single source of emission any air contaminant for a periods aggregating more than three minutes in any one hour which is

   (a) as dark or darker in shade than Ringelmann No. 2, or

   (b) of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke as dark as Ringelmann No. 2 (§ 24242).

2. A person shall not discharge from any source such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or tend to cause injury or damage to business or property (§ 24243).

B. Exemptions

1. Exempted from the prohibitions are smoke from necessary fires set by or permitted by any public officer in the performance of his official duty to abate weeds, to prevent a fire hazard, or to instruct public employees in the methods of fire fighting (§ 24245).

2. The prohibitions of (§ 24242) do not apply to

   a. Agricultural operations in the growing of crops or raising of fowls or animals;

   b. The use of an orchard or citrus grove heater which does not produce unconsumed solid carbonaceous matter at a rate in excess of one gram per minute; or

   c. The use of other equipment in agricultural operations in the growing of crops, or raising of fowls or animals (§ 24251).

   d. Smoke from open burning for which a permit has been issued by the air pollution control officer in accordance with a rule of the district board (sec. 24245.1).

IV. Procedures

A. Composition and organization of hearing board

(California continued)

1. The hearing board of an air pollution control district consists of three members appointed by an air pollution control board (§ 24225). The hearing board selects a chairman from its members (§ 24311).

2. The board may hold a hearing in bank or may designate two or more of their number to hold a hearing (§ 24312).

3. If two or three members conduct a hearing the concurrence of two is necessary for a decision (§ 24313).

4. The chairman of the board may issue subpoenas requiring a witness to appear to testify and to produce books, papers and documents (§ 24315).

5. The board may administer oaths (§ 24320) and require witnesses to be sworn (§ 24321).

B. Permits - Suspension and revocation of permits

1. An air pollution control officer may suspend a permit if the permittee does not furnish him with requested information and must serve on the permittee notice in writing of and the reasons for such suspension (§ 24270). When the information is furnished the permit is to be reinstated (§ 24272). The air pollution control officer may reinstate the permit when "good reasons" exist (§ 24273).

2. Within 10 days after receipt of notice of suspension a permittee may file with the hearing board a demand for a public hearing (§ 24271).

3. An air pollution control officer may request a public hearing regarding reinstatement of a permit which has been revoked or suspended (§ 24274).

4. Within 30 days after a request for a public hearing the hearing board must give not less than 10 days notice of the time and place of such hearing to the permittee, to the air pollution control officer and to such other persons as the board deems should be notified (§ 24275).

5. After a public hearing, the hearing board may

    a. Continue the suspension of a permit,

    b. Find that no violation exists and reinstate an existing permit,

    c. Remove the suspension pending furnishing by the permittee of the information required,

    d. or revoke an existing permit if it finds

        (1) the permittee has failed to correct any conditions required by the air pollution control officer

        (2) a refusal of a permit would be justified

(3) fraud or deceit was employed in the obtaining of the permit, or

(4) any violation of the air pollution control statute or of any rule or regulation of the air pollution control board (§ 24276).

C. Variances

1. The hearing board may permit variances (§§ 24291, 24292, 24296). At least 10 days' notice of the time and place of a hearing to grant a variance must be given to the air pollution control officer and to the applicant (§ 24295).

2. The hearing board in making any order permitting a variance may specify a time not to exceed one year during which the order will be effective. It may be continued from year to year on the approval of the air pollution control officer (§ 24301).

3. The hearing board may revoke or modify by written order after a public hearing held upon not less than 10 days' notice, any order permitting a variance (§ 24298).

4. A variance granted under a local ordinance prior to activation of an air pollution control district is to be continued for the time specified therein or for one year, whichever is shorter or until the hearing board revokes or modifies such variance (§ 24303).

D. Appeals

A trial de novo and an independent determination of the reasonableness and legality of an action of the hearing board may be had in the superior court by a person, including the air pollution control district, aggrieved by such action (§§ 24322 and 24323).

V. Violations and Penalties

A. Injunction

Violation of Article 3 of the statute (§ 24242, 24243) regarding prohibited contamination or of any order, rule or regulation of the air pollution control board may be enjoined. (§ 24252).

B. The following are punishable as misdemeanors:

1. A violation of Article 3 or any order, rule or regulation of an air pollution control district. Each day during any portion of which such violation occurs constitutes a separate offense (§§ 24253 and 24281).

2. Knowingly making any false statements in any application for a permit to use a contrivance causing issuance of air contaminants or in any information, analyses, plans or specifications submitted in conjunction therewith or at the request of the air pollution control officer (§ 24277).

3. The building, erecting, altering, replacing, using or operating

any source capable of emitting air contaminants for which a permit is required when the permit to do so has been suspended or revoked (§ 24278), or when no permit has first been obtained (§ 24278), or when no permit has first been obtained (§ 24279), or contrary to the provisions of any permits issued under regulations adopted pursuant to Article 3 (§ 24280).

4. Wilful failure or neglect of a permittee to furnish information, analyses, plans or specifications required by the air pollution control officer (§ 24282).

5. Obstructing an air pollution control officer in his entrance of a building (except a building designed for and used exclusively as a private residence) or in detaining and inspecting any vehicle designed and used on a public highway but which does not run on rails (§ 24246).

C. Contempt

Failure to obey a subpoena of the hearing board is punishable as contempt. The judge of the superior court of the county, upon receipt of a report of the contempt from the board, is required to issue an attachment of the body. The same penalties may be imposed and the same punishment inflicted on the violator, as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court (§§ 24317, 24318, 24341).

VI. Scope and Construction

The Legislature does not intend to occupy the field of air pollution legislation by this Act and does not prohibit any local ordinance stricter than the provisions of the statute or rules and regulations adopted thereunder, nor do they supersede any local county or city ordinance. This prosecution or punishment of a violation of a local ordinance committed when the ordinance was in full force and effect is not barred if it should be held that these provisions of the statute supersede the local ordinance (§§ 24247-24249).

"VII. Miscellaneous

The Revenue and Taxation Code provides that individual taxpayers (§ 17226) and banks and corporations (§ 24372) may deduct from their income for tax purposes the cost of equipment installed at the source of atmospheric pollutants or contaminants for the purpose of eliminating and reducing such contaminants. The cost shall be amortized over a 60-month period. The cost must have been incurred after December 31, 1954."

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

California

3. Bay Area - San Francisco

I. General Statement

The Bay Area Air Pollution Control District Act was enacted in 1955 to provide a special district to control and suppress air pollution in the San Francisco Bay area because of the special problem created there by the permanent temperature inversion layer.

The statute creates a district composed of nine counties which is a body corporate and politic and a public agency of the State (§ 24350).

The definition of "air contaminant" is the same as that given in the Air Pollution Control District Act with the addition of "mist" as a contaminant (§ 24348.3). (For prohibited emissions see Item III infra, sec. 24360).

II. Administrative Organization

A. Activation of the district

1. The district may transact business and exercise its powers on the effective date of this law in the Counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara (§ 24350.2).

2. In the Counties of Napa, Solano, and Sonoma the district may not transact business nor exercise its powers until the board of supervisors of a county, after giving prescribed notice, on its own motion or on petition of electors, holds a public hearing to determine if there is need for the district to function in the county (§§ 24350.3, 24350.4 and 24350.5).

3. From and after the date of the filing of a certified copy with the board of the resolution by the board of supervisors, declaring the need for the Bay Area Air Pollution Control District to function, the district begins to function and may exercise its powers within the county (§ 24350.8).

B. Board of Directors of Bay Area Air Pollution Control District

1. Composition and organization

   a. The board is the governing body of the district and exercises all the powers of the district except as otherwise provided (§ 24352.3).

   b. The board of supervisors of each county in which the district is activated appoints one of its members to be a member of the board. The city selection committee of each such county (composed of mayors or presiding officers of cities) appoints a member of the board, such member to be selected from among the mayors and city councilmen of the cities within such county (§ 24352).

1/ Citations refer to West's Annotated California Codes, Health and Safety Code and 1961 Cumulative Pocket Part, Deering's California Codes Annotated contains parallel citations.

c. Each member appointed by the board of supervisors holds office for four years and each member appointed by the city selection committee holds office for two years (§ 24352.1).

d. Members of the board may be removed at any time by the appointing authorities (§§ 24352.1 and 24352.2).

e. A majority of the members of the board constitutes a quorum for the transaction of business (§ 24352.4).

f. The board is to establish and maintain offices wherever it deems will best facilitate the accomplishment of district objectives (§ 24354.3).

g. The board decides when and where to meet (§ 24354.4).

h. The board appoints its chairman and other officers from its members (§ 24354.5).

2. Powers and duties

a. General Authority

The district has the power

(1) to have perpetual succession

(2) to sue and be sued

(3) to adopt a seal and alter it

(4) to take by grant, purchase, gift, devise, or lease, hold, use, enjoy and to lease or dispose of real or personal property of every kind necessary to the full exercise of its powers.

(5) to lease, sell or dispose of any property or interest therein when it is no longer required for the purposes of the district, or may be leased without interfering with its use for the purposes of the district, and to pay any compensation received therefor into the general fund of the district (§ 24354).

b. The board may appoint an executive secretary (§ 24352.6).

c. The board may cooperate and contract with any federal, state or local governmental agencies, private industries, or civic groups necessary or proper to the accomplishment of the purposes of the district. (§ 24352.7).

d. The board appoints an air pollution control officer (§ 24355).

(1) the air pollution control officer enforces the provisions of the statute, orders, regulations, and rules prescribed by the board, and variances and standards prescribed by the hearing board (§ 24355.2).

(2) the air pollution control officer, subject to statutory limitations, appoints his personnel (§ 24355.1).

(3) he may require certain information and analyses from persons subject to regulations of the board (§ 24362.4).

e. The board may contract for the conducting of competitive examinations for applicants for employment and for the performance of any other service connected with the administration of the district (§ 24354.8).

f. The board may by ordinance adopt a civil system for employees of the district except the executive secretary and air pollution control officer are exempt from such system and serve at the pleasure of the board (§ 24354.9).

g. The Board of Directors appoints a Bay Area Air Pollution Control District Advisory Council which consists of twenty members, ten of whom must represent specified groups of the community (§ 24356).

h. The board appoints a three-member hearing board, one member to be a lawyer and one a chemical or mechanical engineer (§ 24357).

i. After adoption of a resolution made upon proper notice and hearing the board may adopt and enforce rules and regulations to control the release of air contaminants (§§ 24362 and 24362.1). When the board finds that the air in the district is so polluted as to cause discomfort or property damage to a substantial number of the inhabitants of the district it may make and enforce such general orders, rules, and regulations as will reduce the amount of air contaminants released; but no such order shall specify the design of equipment, type of construction or particular method to be used in reducing the release of air contaminants (§ 24362.3).

j. Except as provided in sections 24360.1 and 24360.2 (see III B.1 and 2 below) orders, rules and regulations of the Board apply to all State agencies, political subdivisions, public and quasi-public corporations and public service corporations (sec. 24360.9).

C. The air pollution control district may be dissolved according to statutory procedures (§ 24372).

III. Prohibited emissions

A. Discharge from any source of such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property is prohibited (§ 24360).

B. This section does not apply to the following:

1. Smoke from fires set by public officers, as a part of their public duties, for the purpose of weed abatement, prevention of fire hazard or necessary instruction of public employees in methods of fire fighting (§ 24360.1).

2. Smoke from fires set, or permitted, by the agricultural commission of any county as a part of agricultural operation for growing crops or raising fowls or animals, if set or permitted in the course of his official duty; nor to smoke from fires set or permitted by the State Forester or his agent for watershed, range or pasture improvement, if

the fire is set or permission given in the performance of their official duties. In neither case may the fire set nor permission given violate rules or regulations laid down pursuant to sec. 24362.3. (See II. B. 21, spura) (24360.2 as amended by Chapter 1329, Laws of 1959).

3. Odors resulting from agricultural operations in growing crops or raising fowls or animals (§ 24360.8).

C. This Act does not occupy the field, and the enactment and enforcement of county or city ordinances stricter than, or identical to, the rules and regulations adopted pursuant to this Act is expressly permitted (§ 24360.3 - § 24360.5, Section 1, Chapter 698, Laws of 1959). See item VII infra for variances.

IV. Procedures

A. Hearing Board

1. Composition and organization

a. The hearing board, appointed by the air pollution control district board, consists of three members (§ 24357).

b. The hearing board shall select its chairman from its members (§ 24367.1).

c. A hearing may be held in bank, or by one or two of the members (§ 24367.2).

d. The concurrence of two is necessary to a decision if two or three members conduct a hearing (§ 24367.3).

2. Powers

a. The hearing board may issue subpoenas (§ 24367.5).

b. Members of the hearing board may administer oaths (§ 24367.10).

c. The hearing board may permit variances (§ 24365).

V. Violations and Penalties

A. Failure to obey a subpoena

1. Failure to appear before a hearing board to give evidence or to produce books and papers in response to a subpoena is contempt and is to be reported by the hearing board to the judge of the superior court of the county in which the person resides (§ 24367.7).

2. Upon receipt of the report, the judge of the superior court issues an attachment and has jurisdiction of the matter upon production of the body of the defendant (§§ 24367.8 and 24367.9).

3. The same punishment and penalties attach to such defendant as in the case of a witness subpoenaed in the trial of a civil cause before a superior court (§ 24367.9).

B. Failure to obey rules, orders, or regulations of the air pollution control district board.

1. The Control Officer may file an accusation with the District Hearing Board that any person has violated rules and regulations of the District Board of Directors. If, after Hearing, the Hearing Board finds there have been violations, and that no variance is justified it shall certify the case to the District Attorney.

2. "The District Attorney shall petition the Superior Court for an injunction restraining such person from any activity causing or threatening pollution. The court shall issue an order requiring such person to show cause why the injunction should not be issued (§ 24367.11, 1959 Amendment, Chapter 698)"

3. "Further proceedings shall be conducted in the same manner as any other action for an injunction except that the court shall receive in evidence a transcript of the proceedings before the Hearing Board and such other evidence as the court, in its discretion, deems proper. (§ 24367.11, 1959 Amendment, Chapter 698)"

4. "The District Attorney may associate with him in the prosecution of such case the counsel for the Board. (§ 24367.11, 1959 Amendment, Chapter 698)"

C. Grievances against Hearing Board

1. Any person, including the district, deeming himself aggrieved may maintain a special proceeding in a superior court within the district to determine the reasonableness and legality of any action of the hearing board (§ 24367.12).

2. "In such a special proceeding after any decision of the hearing board the court is authorized to exercise its independent judgment on the evidence and to make an independent determination of the reasonableness and legality of such action in such court on all issues of law, facts and mixed questions of law and facts and opinions therein involved." (§ 24367.13)

VI. Finances

A. Taxation

Each board of supervisors is required to levy for the benefit of the district an ad valorem tax on the taxable property, but not on intangible personal property, within the county, which tax is a lien upon the property. Collection may be enforced as are liens for county taxes (§ 24370.2 and 24370.3).

B. Loans

1. The district may borrow money for the current or ensuing year in amounts not to exceed the total amount of the estimate of the tax for the current or ensuing year (§ 24370). The amount of money required by a district in a year may not exceed one cent on each one hundred dollars (§ 24370.1).

C. Fees

The Board of Directors of the District may provide a schedule of fees for the filing of applications for variance, etc. (§ 24365.2, 24365.3).

VII. Variances

A. The hearing board may on its own motion or at the request of any person hold a hearing after required notice to determine under what conditions and to what extent a variance from the requirements established by Article 10 or by rules, regulations, or orders of the board is necessary and will be permitted (§§ 24365.1 and 24365.4)

B. Variances may be permitted if compliance with Article 10 or with any rule, regulation, or order of the air pollution control board will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity without sufficient corresponding benefit to the people in the reduction of air contamination, but no variance may permit the maintenance of a nuisance (§ 24365.5).

C. Variances may be revoked or modified by written order after a public hearing held upon not less than ten days' notice (§ 24365.7).

D. The hearing board is to specify the time during which a variance order is to be effective, in no event to exceed one year, but such variance may be continued from year to year on the approval of the control officer (§ 24365.10).

E. Prior local variances may be continued for the time therein specified but no longer than one year unless prior to the time of expiration and hearing board revokes or modifies such variance (§ 24365.11).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS[1]

California

4. Rapid Amortization of Air Pollution Control Devices

Effective with income years beginning after December 31, 1954, a taxpayer may, at his election, claim a deduction with respect to amortization of the adjusted basis (for determining gain) of any device, machinery or equipment for the collection at the source of atmospheric pollutants and contaminants based on a period of 60 months. The period will begin, at the election of the taxpayer, with the month following the month in which the equipment was completed or acquired, or with the succeeding income year.

(Sec. 24372, Revenue and Taxation Code, West's Annotated California Codes)

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[1] Citations refer to West's Annotated California Codes, Health and Safety Code and 1961 Cumulative Pocket Part. Deering's California Codes Annotated ontains parallel citations.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Colorado

The State board of health is authorized to issue such orders and to adopt such rules and regulations, and to establish such standards as the board deems necessary or proper to carry out the purpose of the statute and to administer and enforce the public health laws of the State. The Board may hold hearings, administer oaths, subpoena witnesses and take testimony in regard to all matters connected with the duties of the Board. It may establish advisory committees to advise and confer with the Board concerning the public health aspects of any business, profession or industry within the State [§ 66-1-8, (4) - (6)].

In 1957 the State Board of Health was authorized to establish and enforce standards for exposure to toxic materials in the gaseous, liquid or solid phase and for exposure to environmental conditions, including radiation, that "may be deemed necessary" for the protection of the public health [§ 66-1-7 (20)].

1/ Citations refer to Colorado Revised Statutes 1953 and 1960 Cumulative Supplement.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Connecticut

The Interstate Sanitation Commission, composed of Connecticut, New Jersey and New York is authorized to make a study of air pollution within the boundaries of New Jersey and New York. The State of Connecticut is not to be liable for any of the expenditures necessary for the undertaking nor to be called upon to appropriate any funds for the purpose [§ 25-66 (a)].

In 1957 Connecticut enacted a statute directing various State agencies to undertake studies regarding the need for changes in and additions to laws and regulations administered by each of them that would arise from the presence within the State of special nuclear materials and by-product materials. The agencies are directed to propose necessary legislation. Among the agencies included is the State department of health which is directed to study "hazards ... to the public health and safety, including, without limitation, air pollution . . ." (§ 19-408).

Section 21-22a., adopted in 1959 provides:

> "Each new location of a motor vehicle junk yard shall be completely surrounded with a solid fence . . . and any burning of material , . . must be carried on within this enclosure. Permits for such burnings shall be obtained from local authorities."

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[1] Citations refer to General Statutes of Connecticut, Revision of 1958 as amended. General Statutes Annotated contains parallel citations.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Delaware

Summary

The Delaware Air Pollution Authority administered by the State Board of Health and composed of 8 members (ex officio and appointive) is authorized to study air pollution, to issue rules and regulations based on a statewide standard, and to enforce them as well as statutory provisions, to accept and receive moneys from the Federal Government, industry or other source, and to hold hearings regarding violation of the pertinent statutes or rules, regulations, and orders of the Authority. The statute prohibits such air pollution as constitutes a public nuisance.

I. General Statement

In 1957 Delaware created an Air Pollution Authority to be administered by the State Board of Health to maintain within its jurisdiction a reasonable quality of air consistent with protecting the safety, welfare and comfort of the people of the State and to prevent the pollution of the air with impurities which menace the health and welfare of the people of the State, to the end that the least possible injury shall be done to human, plant and animal life and property.

II. Administrative Organization

A. Members of the Authority (§ 1610)

1. The 8 members of the Authority consist of the Executive Secretary of the State Board of Health, the State Sanitary Engineer, the Director of the Water Pollution Commission, a representative each of the University of Delaware's Agricultural Department and Mechanical Engineering Divisions and 3 members to be appointed by the Governor from industry, and serve staggered terms of 4 years each after the initial term.

2. The State Sanitary Engineer is the secretary.

3. The members elect a chairman from among themselves to serve for a year. The chairman has the authority to call meetings.

4. Four members constitute a quorum.

B. Powers and duties (§ 1611)

1. Develop a program for prevention and control of all sources of air pollution of the State.

2. Advise, consult and cooperate with other agencies, and groups.

3. Encourage and conduct studies, investigations and research relating to air pollution.

4. Collect and disseminate information relating to air pollution.

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[1] Citations refer to Delaware Code Annotated, Title 16 and Cumulative Pocket Part.

5. Promulgate rules and regulations and issue orders when necessary to promote the correction of air pollution problems.

6. Consider complaints, make investigations and hold hearings.

7. Require any person to submit plans for the removal of air contaminants.

8. Encourage voluntary cooperation in preserving the purity of the air.

9. Employ personnel, purchase materials and supplies and enter into contracts.

10. Enter at reasonable times upon any private or public property for the purpose of investigating conditions relating to air pollution.

11. Enforce compliance with State statutes relating to air pollution.

12. Represent the State in negotiations for interstate compacts relating to air pollution control.

13. Select advisory committees to study and advise upon specific problems that may arise from time to time.

14. Cooperate with and receive moneys from the Federal Government or any industry or other source (§ 1612).

III. Nuisances Prohibited (§ 1620)

No person shall discharge into the air solids, liquids, or gases causing such injury to human, plant or animal life, or to property, as constitutes a public nuisance. No person shall cause, erect or continue any nuisance contrary to the provisions of Chapter 16, Title 16 of the Delaware Code.

IV. Procedures

A. Proceedings to abate public nuisances created by air pollution may be instituted at law or in equity in the name of the State on behalf of the Authority by the Attorney General (§ 1621)

B. Hearings (§ 1622)

1. When a violation of the statutory provisions or of an order of the authority regarding air pollution occurs the Authority gives notice to the alleged violator to correct the complaint within a reasonable period or to appear before the Authority at a specified time and place.

2. The alleged violator may appear personally or by counsel at the hearing and upon the evidence there produced the Authority issues an order.

3. The hearings may be held before an officer designated by the Authority.

4. The Authority may take action for summary abatement of the nuisance to protect the public health or welfare.

5. The Authority may designate a member or representative to administer oaths, examine witnesses, and issue notices of hearings and subpoenas.

6. A record of the hearings with findings and conclusions is to be filed with the Authority.

C. Appeals (§ 1624)

A person whose interest is substantially affected by an order or decision of the Authority may appeal to the Superior Court of the county in which the circumstances causing the appeal originated. The Superior Court shall determine the matter as a suit in law and equity.

V. Violations and Penalties (§ 1625)

A fine of not less than $25 nor more than $500 for each day a violation of the statutory provisions regarding air pollution control or of the rules, regulations or orders of the Authority continues is authorized.

VI. Financing (§ 1625)

A sum of $36,000 was appropriated to the credit of the Air Pollution Account of the State Board of Health for use by the Authority during the biennium ending June 30, 1959.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

District of Columbia

The discharge of dense smoke from any building, stationary or locomotive engine, or motor vehicle, place or premises within the District is prohibited. It is required that all ashes, cinders, rubbish, dirt and refuse be removed from buildings, engines, furnaces or boilers to a proper place to prevent "detriment or annoyance" (§ 6-801).

The District Commissioners are authorized to make regulations to effectuate the provisions of §§ 6-801 - 804 (§ 6-802).

Violation of the statutory provisions or a regulation is punishable by a fine of up to $500 for each offense (§ 6-803).

Enforcement of §§ 6-801 - 804 is the responsibility of the Commissioners of the District. They may direct the police or health departments or any officer or employee of the District to perform service necessary in such enforcement (§ 6-804).

1/ Citations refer to District of Columbia Code - 1961 edition.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Florida

1. Air Pollution Control Commission

I. General Statement

The 1957 Florida Air Pollution Control Act established an air pollution control commission in the State Board of Health (§ 403.03), and provided for the establishment of air pollution districts and for State enforcement of the commission's air pollution control rules and regulations in such districts.

Air pollution is defined as:

> "The presence in the outdoor atmosphere of substances in quantities which are injurious or reasonably could be expected to become injurious to human, plant or animal life; provided that all aspects of employer-employee relationship as to health and safety hazards are excluded; and provided further, the term air pollution shall not be deemed to include smoke effluent from pulp or paper mills equipped with and operating electrostatic precipitators or other mechanical devices whereby not less than ninety (90%) per centum of the solids of such smoke are removed therefrom." [§ 403.02(3)]

II. Administrative Organization

A. Air Pollution Control Commission

1. Composition and organization

The air pollution control commission is composed of ten members, residents of Florida, to be appointed by the Governor as follows: the State health officer or some member of the staff of the State Board of Health designated by him; the commissioner of agriculture or a member of the Department of Agriculture designated by him; a person actively engaged in raising cattle; the director of the Florida industrial commission or a member of its staff designated by the director; one professional engineer experienced in sanitary engineering; two representatives from industry; two citizens of Florida representing the general public; and a person actively engaged in growing citrus (§ 403.03).

The commission is to elect annually from its membership a chairman and vice chairman. The State sanitary engineer is to be secretary of the commission (§ 403.07).

Five members of the commission constitute a quorum, but any action must be by at least a majority of the entire commission (§ 403.07).

After the expiration of terms of the members of the first commission, terms are to be for four years each and staggered (§ 403.04).

Members of the commission serve without compensation but are entitled to statutory per diem and travel expenses (§ 403.06).

The governor may remove any appointed member for cause after public hearing (§ 403.05).

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[1] Citations refer to Florida Statutes Annotated and 1961 Cumulative Annual Pocket Part.

2. Powers and duties

The commission has the power to consult with the Board of Health on all matters relating to the carrying out of the Act.

a. Rules and regulations

The commission has the power to formulate, adopt, promulgate, amend and repeal rules and regulations;

(1) without prior notice and hearing to control and regulate the internal affairs of and procedure before itself and

(2) after notice and public hearing to control and prohibit pollution of the air in any air pollution control district if at the public hearing a preponderance of the evidence shows need for such action (§ 403.09).

b. Hearings

(1) The commission is required to have five or more members present for any hearing which it holds.

(2) Any member has the power to subpoena witnesses, administer oaths, and require the production for examination of books or papers, excluding financial records, relating to any matter under investigation at the hearing. Information regarding secret processes or methods of manufacture or production are to be kept confidential and are not to be disclosed in public hearing before the commission, insofar as practicable (§§ 403.11 - 403.16).

c. Creating and dissolution of districts

The commission may organize and create within the State such air control districts as are necessary for the prevention of air pollution as defined by statute. Such districts may consist of one county or any part thereof, or of two or more counties or parts thereof. A hearing after prior notice before the commission is required before the creation or dissolution of such a district (§ 403.12).

The hearing may be called:

(1) upon petition of the board or boards of county commissioners within the proposed district or

(2) upon petition of 15 per cent of the freeholders within the proposed district or

(3) upon the commission's own motion.

d. Advisory services

Every municipality and county is required to notify the Commission of the establishment or proposed establishment of a plant within its jurisdiction which may contribute to air pollution. Within 30 days of such notice, the Commission shall advise the plant owners of the availability of its advisory services and the plant may request that the Commission prescribe reasonable advisory criteria as to the permissible emissions from the plant (sec. 403.09).

B. State Board of Health

1. The Board is required to control air pollution in accordance with the rules and regulations adopted by the commission and for this purpose has power to

   a. conduct research programs to determine causes, effects and hazards of air pollution,

   b. conduct State-wide programs of air pollution control education,

   c. require the registration of persons engaged in operations which may result in air pollution in any air control district,

   d. require the filing of reports by such persons engaged in operations which may result in air pollution is such person consents or if the board, after notice and hearing so directs,

   e. enter and inspect any building or place except private residences to investigate sources of air pollution or to ascertain compliance with the rules and regulations of the commission if the owner consents or the board, after notice and hearing, so directs; prior to the inspection, the inspector must execute an affidavit that all information obtained will be kept confidential except as it relates to air pollution [§ 403.10(1-4)],

   f. receive or initiate complaints of air pollution, hold hearings and institute legal proceedings for the prevention of air pollution and to recover penalties provided by statute,

   g. cooperate with and receive money from the Federal government or from private sources for the study and control of air pollution (§ 403.10).

2. The board with the approval of the commission has power to employ necessary personnel (§ 403.08).

III. Procedures

A. Complaint and conferences

Upon complaint filed with the board or upon its own belief that any person is violating a rule or regulation promulgated by the commission, the board is required to conduct a prompt investigation. If such violation is found to exist the board attempts to prevent such violation by conference, conciliation or persuasion (§ 403.13)

B. Notice and hearing

If the conference, conciliation or persuasion fails to halt the violation, written notice and a copy of the complaint requiring the person named in the complaint to appear before the commission, at a time and place stated in the notice, are served (§ 403.14).

C. Hearing procedure

The respondent to the complaint may file a written answer and may appear at the hearing in person or by representative, with or without counsel and may submit testimony. Testimony is under oath and recorded, but strict rules of evidence are not applicable (§ 403.15).

D. Judicial review and appeals (§ 403.19)

1. Review by the District Court of Appeals exercising jurisdiction over the greater portion of the area in which the air pollution control district lies is available to a person affected by the adoption or repeal of a rule or regulation or by the entry of any order of the commission, within 30 days after the commission action.

2. Within 20 days after the receipt of appeal the secretary of the commission is required to prepare, certify and forward to the appellant or his attorney a transcript of the proceedings, a copy of the order of the commission, and a copy of the notice of appeal.

3. Within 30 days from the filing of the notice of the appellant is required to file with the clerk of the circuit court the documents forwarded to him by the secretary of the commission.

4. The procedures of the court are to be confined to an examination of the record, including the transcript of all evidence, and no presumption is to be indulged concerning the correctness of the action of the commission.

5. These provisions do not preclude other appropriate proceedings in law or equity to determine the validity of any action of the commission.

IV. Violations and Penalties

A. If at the hearing the commission determines that the person against whom the complaint was made is violating any rule or regulation promulgated by the commission, it is required to fix a reasonable time during which that person is required to take the measures necessary to prevent the violation and to give periodic progress reports (§ 403.17).

B. If preventive and corrective measures are not taken in accordance with the order of the commission, the commission may institute proceedings in any court of competent jurisdiction for injunctive relief to prevent any further violation (§ 403.18).

C. Failure of the owner or operator to comply with an order of the Commission is punishable by a fine of up to $300, and each day of violation constitutes a separate offense (sec. 6, H.B. No. 2124 - Laws 1961).

V. Financing

Funds are appropriated by State legislature. Sixty-five thousand dollars was appropriated for the 1957-1959 biennium to carry out the provisions of the air pollution control act (§ 403.21).

VI. Scope and Construction

A. No civil or criminal remedy which is available for a violation of a rule or regulation of the commission is impaired by the Act (§ 403.20(1)).

B. No ordinances or rules or regulations of a municipality, county or board of health not inconsistent with the Act are suspended by the Act (§ 403.20(2)).

C. The provisions in the Act for appeal do not preclude any person from pursuing other proceedings in law and equity to determine the validity of action by the commission (§ 403.19(4)).

VII. Effective Date

Approved June 18, 1957.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Florida

2. Sarasota County

I. Authority of County Commissions

A. The Board of County Commissioners of Sarasota County is authorized to adopt an air pollution code to correct, remove or prevent air pollution in all its forms, including smoke, vapors, dust and wind borne matter originating within the area to which the code is applicable.

B. Code to be adopted after public hearing which shall be known as the Sarasota Air Pollution Control Code (§ 4).

II. Applicability of Code

A. Code is to apply to all areas in Sarasota County outside the corporate limits of any municipality (§ 1).

B. Any municipality may adopt the provisions of the act and thereafter its territory is included within the area to which the code is applicable (§ 2).

III. Administration

A. The Board may establish inspection fees to defray the costs of inspection and enforcement (§ 5).

B. An employee of the county may be designated to act as air pollution control inspector (§ 6).

IV. Enforcement

A. After adoption of code, it is unlawful for any person to construct, reconstruct, alter, repair or use prohibited fuel and refuse burning plants, processes, equipment and devices without a permit (§ 8).

B. The Board may revoke any permit upon a determination that the activity for which the permit was issued is in violation or not in conformity with the Code (§ 8).

C. Violations of the Act or Code are declared to be misdemeanors (§ 11).

D. In addition to other remedies, the Board may constitute any appropriate action in a court of record to enforce the Act, the Code or any order, requirement or decision pursuant thereto (§ 10).

E. Exempted from this Act are the burning or incineration of domestic waste, trees, stumps and brush accumulated as part of land clearing operations and any incineration for domestic purposes (§ 8).

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[1] Citations are to Ch. 59-1843, Laws of Florida, Special Acts of 1959 as amended by Ch. 61-2811, Laws of Florida, Special Acts 1961.

F. An authorized representative of the Board may enter any premises or building except one- and two-family dwellings with the consent of the owner or occupant for the purpose of inspection or to prevent violation of the Act. Such representative is relieved of all personal liability for damage to persons or property as a result of any act required or permitted in the discharge of his official duties.

V. Appeals

A. Any person aggrieved by administrative action taken under the Act or the Code may appeal to the Board for a hearing within 60 days of the action.

B. A notice of public hearing is to be published by the Board which may require the appellant to pay in advance the cost of publication of the notice. This payment will be refunded if the action complained of is not fully affirmed on appeal.

C. In hearing such appeals, the Board may obtain the testimony of expert witnesses and pay them witness fees.

D. After the hearing, the Board shall affirm, modify or reverse, in whole or in part the action appealed from (§ 8).

VI. Effective June 17, 1959.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Florida

3. Brevard County

I. General Statement

The 1959 Legislature established a policy of preserving the highest standards of purity of the air and waters of Brevard County and made the Board of County Commissioners the Brevard County Pollution Control Commission. It is charged with:

1. Promotion of recreational resources;
2. Propagation and protection of wildlife;
3. Facilitation of the growth of desirable natural plant and animal life and industrial development of the County consistent with maximum employment and full industrial development of the County.

To accomplish these ends, it may require the use of all available and reasonable methods to prevent and control water and air pollution (§ 1).

Air pollution is defined as "The presence in the outdoor atmosphere of substances put there by man in concentrations sufficient to cause an unreasonable interference with the comfort, safety, or health of man or the unreasonable (sic) use and enjoyment of his property." [§ 2(2)].

II. Administrative Organization

The Board of County Commissioners is established as the Brevard County Pollution Control Commission (§ 1) with jurisdiction to control water and air pollution in the County (§ 3).

A. Functions of the Board

The Board has the following functions: [2]

1. To enforce provisions of the Act;
2. For this purpose, to adopt rules, regulations and standards consistent with available and reasonable methods of controlling or preventing pollution and consistent with the public welfare (§ 4).

In adopting regulations (§ 24), the Board shall take into account the reasonableness of the activities involved, including:

(a) The character and degree of injury to, or interference with the comfort, safety, health, and the reasonable use and enjoyment of property;

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[1] House Bill 1839 which became law without approval June 20, 1959. References are to sections of this Act.

[2] Provisions dealing with water pollution are omitted.

(b) Social and economic value of activity involved;

(c) Suitability of the activity to the area;

(d) The scientific and economic practicability of reducing or eliminating the discharge.

3. When a pollution emergency exists, to bring action for relief against such pollution by injunction or abatement (§ 5).

B. In carrying out these purposes the Board may:

1. Appoint a control officer to observe and enforce the provisions of the Act and rules and regulations adopted pursuant to the Act (§ 19).

2. Enter, or authorize the entry of, any property and to inspect and investigate conditions of pollution of water or air (§ 8).

3. Request the aid of educational institutions or State agencies (§ 9).

4. Authorize variances from the rules and regulations it lays down if--(§ 20)

   (a) Compliance with the rules and regulations would result in depriving persons of the use of their property,

   (b) Without corresponding advantage to the public in the control of air pollution.

III. Rules and Regulations

A. Rules and Regulations

Rules and regulations shall be adopted by the Board after a public hearing held after 10 days' notice (§ 24).

B. Abatement

Whenever the control officer is of the opinion that a person is violating any provision of the Act or any rule or regulation relating to air pollution, he shall notify such person of his determination by registered mail. Within 15 days of the receipt of such notice that person shall file with the control officer a full report as to the steps taken or to be taken to control or prevent the alleged air pollution. The control officer may then issue his order setting forth the particulars in which the person is failing to comply with such rules and regulations and ordering him to remedy such failure within a stated time. The order shall be sent by registered mail to the person affected (§ 22).

C. Variance

The Board, on its own motion or that of any interested person, may hold a hearing to determine the extent, if any, and under what conditions it will permit the variance from the requirements established by the Act as to air pollution. Ten days' notice shall be given to the petitioner and to the control officer, if any, of the time and place of holding the hearing (§ 20). In determining whether the variance shall be permitted, the Board shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to residents of the area, and to lawful business and activities, in the area, resulting from requiring compliance or permitting variance. If a change in conditions results in a substantial change in the equities and the advantages and disadvantages, the Board may revoke or modify the variance by written order held after 30 days notice to the persons or classes affected (§ 21).

IV. Miscellaneous

A. Crimes and Offenses

Persons found guilty of wilfully violating any provision of the Act or final orders or directives of the Board or court issued in pursuance of the Act are guilty of a misdemeanor and may be punished by a fine of not more than $250.00 or by imprisonment in the county jail for not more than one year or both. Each day in which such violation continues is a separate offense.

B. This Act does not apply to smoke from fire set or permitted by any public officer in the performance of his official duty:

1. For weed abatement.
2. For the prevention of fire hazards.
3. For instruction in methods of fire fighting.

Neither does this Act apply to smoke from agricultural fires set or permitted by the County Agricultural Agent in the course of his official duty:

1. For disease prevention.
2. For pasture control.
3. Agricultural or forest harvest operation (§ 23).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Florida

4. St. Lucie County

I. General Statement

It is prohibited to discharge or permit or allow discharge by any employee or agent into the air in St. Lucie County any smoke, vapor or gas in such quantity as is liable to affect the health of persons, birds, livestock, or vegetation, or damage property, or any noisome odors or noxious gases in such quantity as to create a nuisance (§ 2).

II. Administrative Organization

The Board of Commissioners of St. Lucie County and the State Board of Health, by injunction or other legal means, enforce both the Act and any rules, regulations, or criteria established by the State Board of Health to control air pollution (§ 3).

III. Penalties

Violation of this Act is a misdemeanor, conviction thereof in a court of competent jurisdiction may result in a fine of not more than $500, and each day of violation constitutes a separate offense (§ 4).

IV. Miscellaneous

The Act is subject to approval by referendum (§ 7).

1/ Citations refer to sections in Chapter 31238, Acts of 1955.
2/ Provisions dealing with water pollution are omitted.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Georgia

Any nuisance which is manifestly injurious to the public health may be abated by the order of any two or more justices of the peace of a county founded upon the verdict of twelve freeholders of the same county. The order is directed to and served by the sheriff of the county (§ 72-201).

A person who, after notice to abate, erects or continues such a nuisance is guilty of a misdemeanor (§ 72-9901).

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[1] Citations refer to Code of Georgia Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Guam

The Division of Public Health and Sanitation of the Department of Medical Services under the Director of Medical Services is responsible for inspecting public and private buildings, vehicles, aircraft, ships, and other places, except homes, at reasonable hours (§§ 9500.1.5). The Director may order immediate abatement of a public nuisance, which is defined as "anything which is dangerous to life, injurious to health, or renders . . . air . . . impure or unwholesome." [§§ 9500.5, .50 (e)].

Maintaining or committing a public nuisance on public or private property or omitting to perform a legal duty to remove one is punishable by up to six months in jail or a fine of $500 or both, as is maintaining or permitting a public nuisance to exist on owned property or upon ten days written notice to abate, upon leased or occupied property [§§ 9500.6, .7, .14). After ten days written notice to abate to an owner, the Director may order abatement and levy the cost thereof in the same manner as real estate taxes, and such abatement is performed by the Director of Public Works under the protection of the Director of Public Safety (§§ 9500.8, .9). Complaints alleging public nuisance are investigated and violators may be arrested (§§ 9500.11, .12).

The destroying or attempting to destroy by burning of garbage, dead animals, or other offensive substances the burning of which may give off foul and noisome odors in or within one-quarter mile of Agana, any village, or any other urban area, except in an approved type of incinerator or as otherwise authorized, is prohibited. (§ 9660.7)

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[1] Citations refer to sections in The Government Code of the Territory of Guam 1961 Revision.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1] [2]

Hawaii

I. General Statement

Within the Board of Health a bureau of industrial hygiene is required to enforce the rules and regulations of the board relating to industrial hygiene, and among other things, to detect, prevent and control atmospheric pollution.

The bureau may conduct research and investigations, and disseminate knowledge and information to the public, concerning conditions in places of employment (and areas and places adversely affected by such places of employment) which may be responsible for the development of occupational diseases, afflictions and poor health, and concerning all other matters which are the subject of its duties (§ 46-70).

The Board of Health, with the approval of the Governor, has the power to make such regulations as it deems necessary for the public health respecting nuisances such as gases or vapors, foul or noxious odors, causes of sickness or disease within the State or on board of any vessel (§ 47-1).

When such nuisance is found on private property the owner is notified to abate it at his own expense and within such reasonable time as the board may deem proper. If abatement is not accomplished by the owner within the time set by the board, upon obtaining an order from the district court, the board may abate the nuisance (§ 47-2).

If the nuisance is found on public property the board notifies the person officially in charge to abate. If such abatement is not accomplished within the time set by the board abatement may be secured as in the case of a private owner (§ 47-4).

If it be necessary for the preservation of public life or health to enter any land, building or vessel to abate, examine, remove or prevent any nuisance, a board member or agent, if refused entry, may request the district magistrate of the district where the nuisance is located to issue a warrant for entrance thereon to prevent or remove the source of the nuisance (§ 47-5).

The high sheriff, all police officers and physicians are required to report the existence of a nuisance injurious to the public health (§ 47-7).

A violation of the statute or order of the board is punishable by a fine of not more than $100 and the court may order the defendant at his own expense to carry out the provision or order violated. No appeal shall suspend such order pending the appeal (§ 47-8).

The board of supervisors of the city and county of Honolulu have power to regulate and prescribe the construction of chimneys and smokestacks and to compel the building and cleaning of same, and to regulate and prevent the emission of dense smoke, soot or poisonous gases therefrom and to declare the same a nuisance (§ 149-86.7) and to enact and enforce all ordinances necessary to protect the health of the city and county and its inhabitants (§ 149-86.9).

1/ Citations refer to Revised Laws of Hawaii 1955, as amended through the 1960 Regular Session.

2/ Art. XVI, Sec. 2 of the Constitution of the State of Hawaii provides:

"All laws in force at the time this constitution takes effect and not inconsistent therewith. . . shall be the laws of the State and remain in force, mutatis mutandis, until they expire by their own limitation, or are altered or repealed by the legislature."

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Hawaii

2. Air Pollution Control Act

I. General Statement

The "Air Pollution Control Act" of 1957 establishes a State-wide program of air pollution control under the Board of Health. The Board is authorized to designate specific areas for air pollution control measures (§ 5) and to organize county advisory air pollution control associations (§ 9). Such associations are to advise the Board of county air pollution problems (§ 10) and to discuss and report to the Board on proposed regulations of local application which the Board proposes to adopt (§ 11).

"Air pollution" is defined as "the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such areas of the State as shall be affected thereby." Hazards incident to the employer-employee relationship are excluded. "Substances" include smoke, fumes, odors, gases, solids, particulate matter, etc., or any combination. (sec. 3)

II. Administrative Organization

A. Enforcement agency

The Board of Health is directed to "control" air pollution in accordance with rules and regulations promulgated by it (§ 6) ("control" is defined as including prohibition /§ 3/). Such rules and regulations may designate specific areas for the control of air pollution (§ 5).

B. Duties and powers

1. Administrative

The Board is authorized to:

a. Establish an air pollution control section, hire employees and assign duties;

b. Conduct and supervise research programs on causes, effects and hazards of air pollution;

c. Conduct and supervise program of air pollution control education and to prepare and distribute information on the subject;

d. Appoint masters to conduct hearings and investigations under § 7-27 R.L. Hawaii 1955;

e. With the approval of the governor, cooperate with and receive money from the federal government or any political subdivision of the State, or from private sources for the study and control of air pollution (§ 6 a-c, g, h);

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[1] Citations refer to Act. 60, S.L. 1957. The Act is codified in Title 47, 1960 Supplement to Revised Laws of Hawaii, Sections 47-60 to 47-79.

f. Organize county advisory air pollution control associations as it may determine. Members serve without compensation at the pleasure of the Board and are entitled to necessary expenses incurred. A Board employee acts as secretary (§ 9).

2. Enforcement

a. Permits - The Board is authorized to require all persons and governmental agencies engaged or desiring to engage in operations which may result in air pollution to secure a permit prior to installation, or operation or continued operation after the effective date of the act. The permit will be granted only if operations comply with regulations. The Board may require the filing of plans and reports by such persons, dealing with the installation and its operation (§ 6 d).

b. Inspection - The Board has the authority to enter and inspect, during reasonable hours, any building or place (except a building designed and used exclusively as a private residence) for the purpose of determining compliance with regulations and to make reasonable tests. Confidential information obtained by employees within the scope of employment shall be disclosed only in connection with official duties as it relates to air pollution (§ 6 e). Any disclosure not authorized by the act is a misdemeanor punishable by fine up to $1000. The employee is also liable in damages to any person injured by the disclosure (§ 8).

c. Adoption of regulations - All regulations of strictly local application must be submitted to the appropriate county air pollution association (if there is one) for discussion and report (§ 10).

d. Fees - A fee schedule may be established by the Board to cover the cost of issuing permits and making the necessary inspections, which fees shall be paid by all applicants. The fees are appropriated to the Board for the expenses of the program (§ 7).

III. Procedures

A. Investigation of violations

Upon written complaint, or when the Board has cause to believe there is a violation, an investigation shall be made. If the Board finds a violation exists, the Board shall endeavor to correct it by conference, conciliation and persuasion (§ 12).

B. Hearing

1. If voluntary correction cannot be obtained within a reasonable time, a written notice of hearing before the Board, or a master or masters, together with a copy of the complaint, is to be served (§ 13).

2. The respondent may file a written answer and may appear at the hearing, with or without counsel and submit testimony. The testimony shall be under oath and stenographically recorded, and the parties are not bound by technical rules of evidence (§ 14).

3. Three or more members of the Board, designated by the president, must sit at a board hearing. Trade secrets are not to be disclosed in public hearing before the Board so far as practicable and shall be kept confidential. At the request of respondent the Board shall subpoena witnesses and require the production of records (§ 15).

C. Orders and their enforcement

1. Issuance: After the hearing, if the Board determines the respondent is in violation, it enters an order accordingly and sets a reasonable time for taking required corrective measures and requires periodic progress reports. Secret processes, etc., revealed by such reports are to be kept confidential (§ 16).

2. Injunctive relief: If the order is not complied with, the Board may seek injunctive relief in any court of competent jurisdiction (§ 17).

3. Judicial review: Any person aggrieved by the decision of the Board may appeal to a circuit judge within twenty days after the decision is rendered, and obtain a *de novo* hearing. A notice of appeal is filed with the Board which must forward the notice, together with a certified copy of the hearing, to the clerk of the circuit court to which the appeal is to be taken (§ 19).

Penalties

1. If corrective action is not taken within nine days of the time set in the order of the Board, any private person or agency shall be liable to a penalty of $100 for each seven-day period or fraction thereof that the violation continues beyond such ninth day. The Board may institute legal proceedings in the name of the State to recover the penalty (§ 18).

2. Any person who interferes with or obstructs an employee conducting an inspection is guilty of a misdemeanor and subject to a fine of not more than $500 (§ 25).

Miscellaneous

1. Technical defects shall not invalidate any rule or regulation of the board, and they shall not be subject to judicial review or their enforcement restrained except in connection with an appeal under § 19 of the act (§ 20).

2. When an appeal is taken, any action for enforcement or prosecution for violation may be stayed by the judge having jurisdiction until the determination of the appeal (§ 20).

3. Officers or employees shall not be criminally liable for actions in the performance of their duties (§ 21).

4. County ordinances and regulations not inconsistent with this act or regulations thereunder shall continue in effect and may be adopted in the future. Inconsistent county ordinances and regulations are declared invalid (§ 23).

Effective date - May 6th, 1957.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Idaho

I. General Statement

The "Idaho Air Pollution Control Act (1959)" established a State-wide program for the prevention and abatement of air pollution, established an Air Pollution Control Commission in the State Board of Health, stated its authority and procedure, designated the State Board of Health as the policing agency, authorized programs of research and education and provided for judicial review.

Air pollution is defined in the Act as "the presence in the outdoor atmosphere of substances put there by man in concentration sufficient to cause an unreasonable interference with human, plant or animal life, or the reasonable use of property." All aspects of employer-employee relationships as to health and safety hazards are excluded from the definition. (§ 39-2902)

II. Administrative Organization

A. Organization

An Air Pollution Control Commission is established in the State Board of Health consisting of nine Idaho residents appointed by the Governor as follows:

1. the Administrator of Health or his designate from within his department;
2. the designate of the Commissioner of Agriculture;
3. a member of the faculty of the University of Idaho designated by the University President;
4. the designate of the Idaho Municipal League;
5. a representative of the labor unions designated by the Governor;
6. the designate of the Idaho Mining Association;
7. the designate of the Idaho Forest Products Industry;
8. the designate of the Idaho Chemical Industry;
9. a member of the public appointed by the Governor.

They shall serve overlapping four-year terms (§ 39-2904) and serve without compensation although they shall be reimbursed for expenses incurred (§ 39-2905). The members shall annually elect a chairman. Five members constitute a quorum for the transaction of all business. (§ 39-2906. See also III D below).

B. Powers of the Commission

The Commission has the following powers: (§ 39-2908).

1. To conduct and supervise research programs relating to air pollution.

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[1] Citations refer to Idaho Code and Cumulative Pocket Supplement.

2. To conduct and supervise Statewide programs of air pollution control education.

3. To cooperate with and receive money from the Federal Government, from county or municipal governments and, with approval of the Governor, from any other public or private source.

4. To develop a comprehensive program for the prevention and control of air pollution in the State.

5. To advise and consult with other interested groups, Federal, State, local and private, in the furtherance of the purposes of the Act.

6. To adopt, amend and repeal rules and regulations to control and prohibit air pollution throughout the State or in affected areas of the State. A public hearing on any such proposed action is to be held after 30 days' notice by publication; which must be given to the public to present evidence. Any persons heard at the hearing must be given written notice of the determination of the Commission. No rule, regulation or amendment or repeal thereof, shall be effective until 60 days after adoption by the Commission.

7. After the adoption of rules and regulations, to initiate and to receive complaints of air pollution, to hold hearings on the same and enter orders to diminish and abate air pollution and to enforce its rules and regulations; and to institute legal proceedings, including suits for injunctions for the enforcement of its orders, rules, and regulations and to prevent air pollution and enforce penalties.

8. To organize county air pollution divisions in each county in which it shall be advisable to study air pollution problems locally. (§§ 39-2912 and 39-2913) All rules and regulations of local application may be submitted to such divisions for study and report (§ 39-2914). Such divisions shall be composed of residents of the county appointed by the Commission without compensation.

9. To employ necessary personnel (§ 39-2907).

C. Powers of the Board of Health (§ 39-2910)

The Board has the authority

1. To cooperate with the Commission in conducting and supervising research and education.

2. To cooperate with the Commission in requiring the registration of persons engaged in operations that may result in air pollution, and, on direction of the Commission, after a hearing to the person involved, to require the filing by such persons of reports relative to air pollution including location, height of outlet, composition of effluent etc.

3. To police air pollution in accordance with rules and regulations adopted by the Commission.

4. To enter and inspect any place, except private residences, both to investigate sources of air pollution and to ascertain compliance with rules and regulations of the Commission. Prior to such inspection, the inspector must sign a statement before a notary public that all information gained by such inspection must be kept confidential except as it relates to air pollution. Copies of analytical reports on samples taken shall be promptly furnished to persons suspected of causing pollution.

5. To initiate, receive and file complaints with the Commission.

III. Procedures

A. On receipt of a written complaint, or if the Board of Health has reason to believe that any person is violating any rule or regulation of the Commission, the Board shall cause an investigation of the situation to be made, and if it finds that such violation exists it shall endeavor, by conference, conciliation and persuasion, to eliminate any source or cause of air pollution (§ 39-2915).

B. If the above efforts fail in a reasonable time to correct the situation the Board shall file a written complaint with the Commission and cause a copy of it, together with a notice of time and place of hearing, to be served on the persons complained against (§ 39-2916). Such persons may file a written answer to the charges, may appear and submit evidence or both (§ 39-2917).

C. Testimony at the hearing will be under oath and recorded stenographically, but the strict rules of evidence in courts of law shall not apply. Copies of the transcript shall be available to respondents on their request and at their expense (§ 39-2917).

D. All hearings by the Commission shall be held before three or more members designated by the chairman. Any member of the Commission shall have the authority to subpoena witnesses and papers and administer oaths. On request of respondents the Commission shall subpoena witnesses and papers relating to the matter under inquiry. The affirmative vote of at least five members of the Commission is necessary to enter any order or to adopt any rule or regulation. Information as to secret processes or methods shall not be disclosed in public hearing insofar as practicable and shall be kept confidential (§ 39-2911).

E. After the hearing if the Commission determines that the person complained against is violating any rule or regulation it shall fix a reasonable time to take measures to correct the situation and shall require periodic progress reports. Information in such reports as to secret processes or methods of operation shall be kept confidential (§ 39-2918).

F. Persons found by the Commission to have violated any rule or regulations shall be liable for penalty of $500.00 per week, commencing the 10th day after the time fixed for the taking of preventive or corrective measures. The penalty may be collected in a civil action in the District Court in the county where the pollution originates. All penalties collected are paid into the county common school fund (§ 39-2919).

G. If corrective measures ordered by the Commission are not taken, the Commission may institute a civil action for injunctive relief to prevent further violation of rules and regulations (§ 39-2919).

H. 1. Any person whose interest is substantially affected by the adoption or repeal of any rule or regulation, including orders establishing or dissolving county air pollution control divisions, may have such action reviewed by the District Court, exercising jurisdiction over the major portion of the area where the affected property lies or the county air pollution control division is located, by filing notice of repeal with the Secretary of the Commission within 30 days of the Commission's action.

2. Within 20 days of receipt of the notice of appeal the Secretary of the Commission shall certify and furnish the appellant a copy of transcript of the proceedings of the Commission and a copy of the order or decision appealed from.

3. If the appellant files these documents within 30 days from the filing of the notice of appeal with the proper District Court, such court has complete jurisdiction over the matter. The proceedings in the court are by trial *de novo*.

4. Thereafter a final order of the District Court may be appealed to the Supreme Court.

5. These provisions shall not displace any other appropriate method of testing the validity of any action of the Commission.

IV. Miscellaneous

A. Neither this Act nor rules and regulations adopted pursuant to it affect ordinances or regulations issued by any municipality, county or board of health, or the right of such agencies to adopt ordinances or regulations not inconsistent with the Act and rules and regulations thereunder (§ 39-2922).

B. Existing civil and criminal remedies for acts which may be a violation of a rule or regulation of the Commission are preserved and functions vested in the Board of Health by other acts are not affected (§ 39-2921).

C. The Commission, Board, County Air Pollution Control Divisions and courts in making rules and regulations and in enforcing the provisions of this Act shall take into consideration all facts bearing on the reasonableness of the activity involved and the regulations proposed to control it (§ 39-2909) including:

   1. The harm caused or threatened to be caused [§ 39-2909 (a)].
   2. The social and economic value of the activity involved [§ 39-2909 (b)].
   3. Its suitability to the area in which located [§ 39-2909 (c)].
   4. The scientific and economic practicability of abating the pollution [§ 39-2909 (d)].
   5. The exercise of a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the area and lawful business therein of requiring compliance with specific requirements of rules and regulations.

Miscellaneous

Anything which is injurious to health, or offensive to the senses or is an obstruction to the free use of property is a nuisance, (§ 18-5901), the maintenance of which is punishable as a misdemeanor (§ 18-5903).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Illinois

1. State Laboratories

The Department of Public Health has power to maintain physical, chemical, bacteriological and biological laboratories to make examinations of atmosphere and equipment and processes relating thereto and to make such diagnostic tests for the evaluation of health hazards necessary for the protection of the people of the State. [Ch. 127, § 55 (6)].

2. Cities

For the purpose of lessening or preventing the discharge of air contaminants, the corporate authorities of a city, village or incorporated town may prescribe by ordinance for the regulation of (1) the design and installation of equipment of buildings and uses of land connected with air contamination, (2) the operation or use of equipment and appliances emitting air contaminants, (3) the conduct of uses of land causing emission of air contaminants and (4) the abatement of an operation activity or use causing air contamination.

"Air contaminant" as defined "means and includes but is not limited to the following: dust, soot, mist, smoke fumes, fly ash, vapor, corrosive gas or other discharge, and any other air-borne material or substance that is offensive, nauseous, irritating or noxious to humans or other animal life".

Sec. 11-19-11 of Illinois Municipal Code as added by H. B. 348, approved August 25, 1961.

3. Counties

For the purpose of lessening or preventing the discharge of air contaminants, counties may prescribe by ordinance for the regulation of (1) the design and installation of equipment of buildings and uses of land connected with air contamination, (2) the operation or use of equipment and appliances emitting air contaminants, (3) the conduct of uses of land causing emission of air contaminants and (4) the abatement of an operation activity or use causing air contamination.

"Air contaminant" as defined "means and includes but is not limited to the following: dust, soot, mist, smoke fumes, fly ash, vapor, corrosive gas or other discharge, and any other air-borne material or substance that is offensive, nauseous, irritating or noxious to humans or other animal life". (Title 34, section 421.2 Smith Hurd Illinois Annotated Statutes 1961 Cumulative Annual Pocket Part)

4. Northeastern Illinois Metropolitan Area Air Pollution Control Board [2]

I. General Statement

A. Purpose

The Northeastern Illinois Metropolitan Area Air Pollution Control Board established in 1961, encompasses the Northeast Illinois Metropolitan Area which is included within the counties of Cook, Lake, McHenry, DuPage, Will and Kane (Sec. 232(f)).

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[1] Citations refer to Smith-Hurd Illinois Annotated Statutes Cumulative Annual Pocket Part.

[2] Citations refer to Smith-Hurd Illinois Annotated Statutes Title 112½ (1961 Cumulative Annual Pocket Part).

The Board does not have any enforcement authority although it does have authority to make inspections and investigate complaints. Its major functions are to render technical assistance and to cooperate with other groups. (See "II. B. Powers and duties" below).

The purpose of the Act is "to seek to achieve such a reasonable degree of purity of the air resources of the Northeast Illinois Metropolitan Area consistent with maximum employment and full industrial development as shall be technically feasible, economically reasonable and necessary for the protection of the normal health, the general welfare, the property and people of the State." It is declared to be the intention of the Act that "primary responsibility for the control of the emission of air contaminants into the atmosphere shall rest with the responsible local government agency". (Sec. 231)

B. Definitions (Sec. 232)

"Air pollution" is the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life and property.

"Air contaminant" is "dust, fumes, gas, mist, smoke, or vapor, or any combination thereof".

"Air contaminant source" is any and all sources of emission of air contaminants, whether publicly or privately owned, and includes all buildings, businesses, motor vehicles, ships, locomotives, and open burning.

II. Northeastern Illinois Metropolitan Area Air Pollution Control Board

A. Organization and Composition

The Board is established in the Illinois Department of Public Health and consists of the Department ex officio and 6 regular members. The members are appointed by the Governor for a 4-year term with the advice and consent of the Senate, and shall consist of a licensed physician, a registered graduate engineer and one representative each of agriculture, industrial management, municipal government and the general public.

The Board is to meet at least twice a year, and a registered sanitary engineer appointed from the staff of the Department shall serve as technical secretary. (233)

B. Powers and duties

The duty and power to assist and cooperate with other groups interested in and affected by air pollution is vested in the Board and the Board is authorized, with respect to the Northeastern Illinois Metropolitan Area, to:

1. Advise, consult and cooperate with other agencies of the State, local governments, industries, the State of Indiana, the Federal Government and affected groups in the prevention and control of air contamination sources within the State.

2. Encourage and conduct studies, investigations and research relating to the causes, effects, prevention, control and abatement of air pollution.

3. Collect and disseminate information relating to air pollution and its prevention and control.

4. Encourage voluntary cooperation by persons, local governments or other affected groups in abating or preventing air pollution.
5. Encourage local air pollution control agencies to handle their own air pollution problems.
6. Furnish technical assistance to local governments on request.
7. Represent the State in negotiation of interstate air pollution control compacts.
8. Accept and administer grants, gifts or other funds to carry out the Act.
9. Enter private or public property, except private residences, at reasonable times, to investigate and inspect air contaminant emissions.
10. Investigate all complaints received by it. (Sec. 234)

Indiana

1. Air Pollution Control Commission

I. General Statement

A. Summary

The 1961 Air Pollution Control Act established an Air Pollution Control Board as an independent enforcement agency and vested in the State Board of Health the power and authority to conduct studies, investigation and research, render technical assistance, etc. (See Item II B below.)

It is declared to be the intent and purpose of the Act to seek to achieve such a reasonable degree of air purity consistent with maximum employment and full industrial development as shall be technically feasible, economically reasonable and necessary for the protection of normal health, the general welfare and the property and people of the State. (Sec. 2) The discharge of air contaminants so as to "cause air pollution and create a public nuisance" is declared to be contrary to the public policy of the State and the provisions of the Act. (Sec. 5)

The declared intention of the Act is that primary responsibility for the control of the emission of air contaminants into the atmosphere shall rest with the responsible local governmental agency. (See Item II A below.)

B. Definitions

"Air pollution" is defined as the "presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life and property." (Sec. 2 (c))

"Air contaminant" means "dust, fumes, gas, mist, smoke or vapor, or any combination thereof." (Sec. 2(d))

"Air contaminant source" is broadly defined as "any and all sources of emission of air contaminants, whether privately or publicly owned or operated" and includes, among other examples specifically listed, motor vehicles, railroad locomotives, ships and boats. (Sec. 2(e))

II. Administrative Organization

A. Enforcement agency--Adjudicatory functions

1. Membership

Enforcement is vested in the 7-member Air Pollution Control Board of the State of Indiana (Sec. 4), which is created as an administrative board (Sec. 3). The Secretary of the State Board of Health is an ex-officio member. The six other members, appointed by the governor for four-year terms and removable by him for cause are a licensed physician, a registered graduate engineer, and a representa-

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[1] Citations refer to Ch. 171, Indiana Laws of 1961 (Regular Session), approved March 8, 1961. This Act is codified in Title 35, Chapter 46 of Burns Indiana Statutes, Annotated, 1962 Cumulative Pocket Part.

tive of agriculture, of industry, of municipal government and of the general public. Provision is made for filling vacancies and for payment of per diem and mileage of the appointed members. (Sec. 3)

2. Organization and staff

The board elects a chairman and vice chairman annually at the first meeting in each calendar year, and is required to hold at least two regular meetings a year. A registered sanitary engineer is to be appointed by the Secretary of State Board of Health from his staff to serve as technical secretary of the Board, to handle correspondence, investigations, and prepare reports and data between meetings as the Board may direct. Provision is made for special meetings at call of the chairman or two members. (Sec. 3)

3. Duties and powers (Sec. 4A)

The Board is authorized to:

a. Make investigations, consider complaints, and hold hearings;

b. Enter necessary orders, and require action to abate air pollution taking into consideration (1) the character and degree of injury to, or interference with, comfort, safety, health, use and enjoyment of property, (2) the social and economic value of the activity, and (3) the scientific and economic practicability of remedial action. Appropriate advisory recommendations may also be made;

c. Adopt rules and regulations consistent with the purpose of the statute (see Item I above); and

d. Enforce its orders as provided under applicable State Law.

B. Investigative, research and cooperative functions (Sec. 4 B)

The State Board of Health is authorized to:

1. Advise and consult with public and private groups, other States, and the Federal government in the prevention and control of air contamination sources;

2. Conduct studies and research relating to causes, effects, prevention, and control of air pollution;

3. Collect and disseminate information;

4. Encourage voluntary cooperation by public and private groups in obtaining a reasonable degree of air purity;

5. Encourage authorized local air pollution control agencies to handle their own problems, and on request, provide technical assistance to local governments;

6. Represent the State in development of interstate air pollution control compacts;

7. Accept and administer grants and gifts;

8. Enter and inspect at reasonable times all public and private property except private residences.

9. Investigate complaints, make reports as it deems advisable to Control Board, and participate on behalf of the State in Control Board proceedings; and

10. Budget and receive appropriations for carrying out the statute.

III. Enforcement Procedures

A. Jurisdiction (Sec. 5)

The Control Board authority is limited to complaints concerning air contaminant sources located in areas where the Board finds after a hearing that no local air pollution law or regulation consistent with Act is in effect or that the local law or regulation is not being enforced adequately, and in the Board's opinion, is not intended to be so enforced.

B. Hearings

The Control Board may hold a hearing concerning a suspected violation on its motion, on complaint filed by any person, or by a city, county, town or the State Board of Health. The notice and hearing procedures are controlled by the State Administrative Adjudication and Court Review Act.

IV. Penalties (Sec. 7)

It is unlawful to refuse to comply with any rule, regulation or order of the Board, or to interfere with or deny entrance to Board or State Board of Health personnel in their official duties.

V. Local option (Sec. 8)

Towns, cities, and counties are authorized to enact air pollution control ordinances which do not conflict with the Act and are designed to effectuate its general intent and purpose.

VI. Effective date

The Act, approved March 3, 1961, becomes effective on January 1, 1963.

2. Motor Vehicle Air Pollution

Every motor vehicle is required to be equipped with a muffler to prevent "annoying smoke" and the engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to "prevent the escape of excessive fumes or smoke".

(Chapter 260, Laws of 1961)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Iowa

I. General Statement

In 1951 Iowa amended its statutory definition of nuisance to include "the emission of dense smoke, noxious fumes, or fly ash in cities" and provided that "cities may provide the necessary rules for inspection, regulation, and control" thereof /§ 657.2 (11)/.

II. Procedure

A civil action by ordinary proceedings to enjoin and abate a nuisance and to recover damages may be brought (§ 657.1).

III. Penalty

The penalty for maintaining a nuisance is a fine not to exceed $1000 or imprisonment not exceeding 1 year, and the court, with or without the fine, may order the nuisance abated (§ 657.3).

1/ Citations refer to the Iowa Code Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Kansas

I. General Statement

In 1907 Kansas enacted a statute enabling the State and local boards of health to investigate and control upon private property or watercourses nuisances, sources of filth and causes of sickness (§ 65-159).

II. Administrative Organization

The State board of health and the local boards of health have authority to examine into all nuisances, sources of filth and causes of sickness that in their opinion may be injurious to the health of the inhabitants within any county or municipality of the State (§ 65-159).

III. Procedure

If a nuisance is found on private property or watercourse the boards of health may order in writing the owner or occupant at his own expense to remove the nuisance within twenty-four hours or such reasonable time as the board may order (§ 65-159).

IV. Penalty

A. A fine of not less than $10 or more than $100 may be assessed upon conviction and each day's continuance of the nuisance is a separate offense (§ 65-159).

B. It is the duty of the county attorney to prosecute violations of the nuisance statute (§ 65-160).

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[1] Citations refer to General Statutes of Kansas (Annotated) 1949.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Kentucky

I. General Statement

The Kentucky Air Pollution Control Act, enacted in 1952, establishes statewide standards for air pollution control with enforcement on a county basis at local option.

Air contaminant is defined to include "smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof" [§ 77.055 (2)].

The statute creates in each county an air pollution control district (§ 77.010) and provides for air pollution control boards to be the governing bodies of such districts (§§ 77.065, 77.070, 77.115).

II. Administrative Organization

A. Establishment of county air pollution control districts

An air pollution control district is established in each county with boundaries coextensive with the county (§ 77.010).

B. Activation of districts

Air pollution control districts are authorized to function only after a resolution by the appropriate county fiscal court, and, in addition, in the case of a county containing a city of the first or second class, a municipal ordinance, declaring that there is a need for an air pollution control district to function in the county and the city respectively (§§ 77.015; 77.055 (4)).

The resolution and ordinance are authorized only if, from evidence received at separate public hearings as to which required public notice has been given (§§ 77.020, 77.025, 77.040) it is found there is need for a district to function because

1. The air within the county is so polluted with air contaminants as to be injurious to health, or an obstruction to the free use of property, or offensive to the senses of a considerable number of persons, so as to interfere with the comfortable enjoyment of life or property (§§ 77.030; 77.035).
2. It is not practical to rely upon the enactment or enforcement of local ordinances to prevent or control air pollution (§§ 77.030; 77.035).

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[1] Citations refer to Kentucky Revised Statutes - July 1960.

C. Governing body of district

An air pollution control board is the governing body of the air pollution control district (§ 77.115).

1. Organization and composition

a. The members of the fiscal court of a county are ex officio, the members of the air pollution control board and they and their personnel are to perform the same duties for the board as for the county (§ 77.065).

b. In a county containing a city of the first or second class the air pollution control board consists of 3 members appointed by the county judge, and 4 members appointed by the mayor of the city of the first or second class contained within the county (§ 77.070).

c. Persons interested in the sale of air pollution control equipment are ineligible for membership on the board or for employment by the board (§ 77.110).

d. Meetings of each board are held at least once each calendar month (§ 77.080).

e. In a county containing a city of the first or second class the air pollution control board, in July of each year, elects from its membership a chairman and a vice-chairman (§ 77.085).

f. A majority of the members of the board constitute a quorum for all purposes. The affirmative vote of at least a majority of the membership of the board is necessary for the adoption of any motion, measure, or resolution unless the bylaws of the board require a larger number (§ 77.080).

g. All air pollution control board members serve without compensation other than recovery of actual expenses from district funds (§ 77.075).

2. Duties and powers

a. In general, the district has the powers of a body corporate (§§ 77.050--77.060).

b. The board may make and enforce all needful orders, rules, and regulations necessary or proper to accomplish the purposes of the statute (§ 77.180) after a public hearing of which the required public notice has been given (§ 77.185).

c. The board of a district containing a city of the first or second class is required to employ a secretary-treasurer and an air pollution control officer, neither of whom may be a member of the board, and may provide for them to employ various personnel (§ 77.085).

The board of a district not containing such a city may appoint an air pollution control officer and provide for him to employ other personnel (§ 77.090). The air pollution control officer is directed to enforce the Act and the rules and regulations of the board (§ 77.145). He and his assistants are given by statute rights of entry and inspection (§ 77.165), and the status of peace officers (§ 77.145).

d. The board may employ and remove professional and technical advisers, experts and other employees at its pleasure as it deems necessary (§77-095).

e. The board must require bond of the secretary-treasurer and air pollution control officer and may require it of other officers and employees (§77.100).

f. The air pollution control board appoints a hearing board of 3 members, to serve, after the inital terms, for staggered terms of 3 years each (§77.105).

g. The air pollution control board may fix reasonable limits for particular air contaminants or other material which in their opinion may cause injury, detriment, nuisance, or annoyance to the public (§77.155).

h. The air pollution control board may by regulation require a permit before any equipment which may cause the issuance of air contaminants may be built, erected, altered, replaced, used or operated, and, as a condition of the permit may require use of approved equipment to reduce or eliminate air pollution. Four statutory exceptions to such requirements are:

    1. mobile equipment
    2. dwellings for less than 5 families
    3. agricultural equipment
    4. repairs or maintenance of approved equipment (§77.195).

i. The air pollution control board may contract with the county or any city within the district for assistance in regulation of installations which may issue air contaminants (§77.195).

D. Financing

1. In a county where the air pollution control district has been activated, the fiscal court and the legislative body of a city of the first or second class, if there is one, may annually appropriate funds to the district (§77.125). Provisions are also made for the preparation of budgets by the boards and for related fiscal procedures (§§77.130-77.140).

2. Fees

    a. A schedule of permit fees may be established by the board to cover the cost of issuing permits and inspections (§77.205). These fees may be paid directly to a city when a contract for assistance has been made or into the district treasury (§77.120).

    b. A schedule of fees covering the cost of administering the variance provisions (§§77.245-77.275) may be established. The fees are paid into the district treasury (§77.255).

E. Prohibited emission of air contaminants and operations exempted

1. Prohibited emissions

The discharge from any single source of emission of any air contaminant which is as dark or darker than Ringelman No.2 and of such opacity as to obscure an observer's view to a degree equal to or greater than Ringelman No. 2 for a period or periods aggregating more than 3 minutes in 1 hour is prohibited.

It is also prohibited to discharge such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to or which endanger the comfort, repose, health or safety of the public, or which cause or tend to cause injury to business or property (§ 77.155). (See also II C 2 g. of this digest.)

2. Exemptions

Exempted from the prohibition are buildings used exclusively for private residences and containing fewer than 5 dwelling units, equipment used for agricultural operations, and smoke from fires authorized by any public officer. Also exempted are air contaminants emitted when a fuel consuming device is being cleaned and a new fire being built therein, in which case smoke greater than the prohibited density is permitted for no longer than 6 minutes in every 60 minutes (§ 77.160).

III. Procedures

A. Composition and organization of hearing board

1. The hearing board of an air pollution control district consists of 3 members appointed by an air pollution control board (§ 77.105). It is required to select a chairman from its members (§ 77.285).

2. The board may hold a hearing en banc or may designate 1 or 2 of its members to hold a hearing (§ 77.285).

3. If 2 or 3 members conduct a hearing the concurrence of 2 is necessary for a decision (§ 77.285).

4. The board may issue subpoenas to be served as in a civil action (§ 77.290).

5. The board may require witnesses to be sworn (§ 77.300).

B. Permits--Suspension and revocation of permits

1. An air pollution control officer may suspend a permit if the permittee does not furnish him with required information and must serve on the permittee notice in writing of and the reasons for such suspension (§ 77.220). When the information is furnished, the permit is to be reinstated. The air pollution control officer may reinstate the permit when "good reasons" exist (§ 77.020).

2. Within 10 days after receipt of notice of suspension a permittee may file with the hearing board a demand for a public hearing (§ 77.220).

3. An air pollution control officer may request a public hearing regarding revocation or suspension of a permit (§ 77.225).

4. The hearing board must give 10 days' notice of the time and place of the public hearing to the permittee, to the air pollution control officer and to such other persons as the board deems should be notified (§ 77.225).

5. After public hearing the hearing board may continue the suspension of a permit, find that no violation exists and reinstate an existing permit, or remove the suspension pending furnishing by the permittee of the information required (§ 77.230).

C. Variances

1. The hearing board may permit variances (§ 77.245). At least 10 days' notice of the time and place of a hearing to grant a variance must be given to the air pollution control officer and to the applicant (§ 77.250).

2. After public hearing held after requisite notice the hearing board may revoke or modify any variance (§ 77.265).

3. Statutory standards for granting a variance are prescribed which include a finding that compliance will result in the closing of a lawful business without sufficient corresponding benefit in the reduction of pollution (§ 77.260).

D. Appeals

Appeal may be taken by a party to the hearing, including the air pollution control district, from the finding of the hearing board to the circuit court of the county in which the district is located and from the circuit court to the Court of Appeals of Kentucky (§ 77.035).

IV. Violations and Penalties

A. The making of false statements in applications, reports, etc.; the failure to supply required information; the failure to obtain required permits or operations contrary to permit, and failure to comply with regulations are included as violations of the statute (§ 77.255).

B. Violations of the statute are punishable by fine (§ 77.990) and may be enjoined (§§ 77.175; 77.240).

C. Subpoenas issued by a hearing board are enforced by contempt proceedings and attachment of the person. The same penalties and punishment may be imposed as in the case of a witness subpoenaed in a trial of a civil cause before a circuit court (§ 77.295).

V. Scope and construction

The statute does not pre-empt the field and does not prohibit the enactment or enforcement of any local ordinance stricter than therein provided (§ 77.170).

VI. Effective date

The effective date of this chapter is March 14, 1952.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Louisiana

If the works or materials for any manufactory or other operation, cause an inconvenience to those in the same or in the neighboring houses, by diffusing smoke or nauseous smell, and there be no servitude established by which they are regulated, their sufferance must be determined by the rules of the police, or the customs of the place (Art. 669).

The mayor and alderman of cities and towns, but not of villages, have power to regulate the construction and building of chimneys, smokestacks and smoke and hot air flues [§ 33:402 (11)].

The mayor and board of aldermen of every municipality have power to secure the general health of the municipality and to prevent, remove and abate nuisances [§ 33:401 (8)] and to regulate and order the cleaning of chimneys [§ 33:401 (10)].

The State Board of Health is required to prepare a sanitary code for the State, setting forth rules, regulations, and ordinances for the improvement of the hygienic and sanitary conditions of the State. It must contain general rules in regard to those public health, sanitary and hygienic subjects which cannot, in the opinion of the Board, be sufficiently regulated by the local boards (§ 40:11).

Local boards of health may pass strictly local health and sanitary ordinances and define and abate nuisances dangerous to the public health. They may regulate the carrying on of trade and business injurious to public health, the erection of buildings, and may provide for the vacation and demolition of buildings when necessary for the protection of public health. The rules and regulations of the local board may not conflict with those of the sanitary code or those of the State board of health (§ 40:35).

Smoke consumers or other necessary appliances competent to consume not less than 75 per centum of the smoke resulting from the burning of fuel used in providing motive power for a steam plant located within an incorporated city of 50,000 or more inhabitants must be provided. Violators of the provision are subject to a $25 fine or 30 days' imprisonment for each day the plant is operated without the required appliance (§ 40:1251).

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[1] Citations refer to West's Louisiana Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Maine

"The erection, continuance or use of any building or place for the exercise of a trade, employment or manufacture which, by noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals, or to the public . . . (are) declared to be public nuisances (s)." (Chpt. 141, sec. 6).

"The local health officers shall receive and examine into the nature of complaints made by any of the inhabitants concerning nuisances dangerous to life and health within the limits of the jurisdiction; enter upon or within any place or premises where nuisances or conditions dangerous to health and life are known or believed to exist, and personally, or by appointed agents, inspect and examine the same; and all owners, agents and occupants shall permit such sanitary examinations; and every such health officer shall order the suppression and removal of nuisances and conditions detrimental to life and health found to exist within the limits of his jurisdiction (Chpt. 25, sec. 48)."

The Maine legislature has directed the departments of forestry, inland fisheries and game, sea and shore fisheries, and the aeronautics commission as to, inter alia, the protection, if necessary, of the airspace from pollution, to initiate and to pursue continuing studies as to the need, if any, for changes in the laws and regulations administered by it that would arise from the presence within the State of special nuclear, source, by-product, and radioactive materials, and from the operation in Maine of production or utilization facilities, and , on the basis of such studies, to make such recommendations for the enactment of laws or amendments to law administered by it, and such proposals for amendments to the regulations issued by it, as may appear necessary and appropriate. (C. 52-A, § 4. VII)

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[1] Citations refer to Revised Statutes of Maine 1954.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Maryland

In 1950 Maryland enacted a statute authorizing and directing the Governor to include in the budget an item for appropriating $100,000 annually to the State Department of Health for the study and control of air pollution in Maryland. It further directed that not less than one-half of such appropriation be paid over to the Health Department of Baltimore City for use in the study and control of air pollution in and adjacent to the City of Baltimore (Art. 43, § 118).

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[1] Citations refer to Annotated Code of Maryland 1957 and 1959 Cumulative Supplement, as amended through the 1960 Regular Session.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Massachusetts

1. Air Pollution Control Act

I. General Statement

Under the 1954 air pollution control act the Massachusetts State Department of Health is charged with advising municipal authorities in regard to atmospheric pollution. Subject to the approval of the State department of health, the local board of health or other municipal legal authority authorized to control atmospheric pollution may adopt and enforce reasonable rules and regulations for the control of such pollution. The pollution to be controlled includes but is not limited to the emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors and dusts as may arise within the bounds of the municipality and which constitutes a nuisance or danger to the public health, or impairs the public comfort and convenience. (§ 31 C).

II. Administrative Organization

A. A board of health or other legal authority constituted for such purpose by vote of the town or city council has jurisdiction to adopt and enforce rules and regulations to control atmospheric pollution subject to the approval of the State Department of Health (§ 31 C).

B. The State Department of Health may adopt and amend regulations to prevent pollution or contamination of the atmosphere (§ 142 A).

C. Powers and duties

1. of the local control body (§ 31 C)

    a. adopt and enforce reasonable rules and regulations.

    b. after notice hold a public hearing before adoption of rules and regulations.

2. of the State board of health

    a. adopt and amend rules and regulations to prevent pollution or contamination of the atmosphere (§ 142 A).

    b. approve rules and regulations promulgated by local control bodies (§ 31 C).

    c. advise local control bodies in all matters of atmospheric pollution (§ 31 C).

    d. upon request of a local control body and after a hearing of all interested parties assume joint jurisdiction to regulate or control the cause of atmospheric pollution arising in another town (§ 31 C).

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[1] Citations refer to Annotated Laws of Massachusetts C. 111 and 1961 Cumulative Supplement.

III. Violations and Penalties

A. The supreme judicial or superior court may enforce the regulations established by the control Authority and restrain the use or occupation of premises until the regulations have been complied with (§ 142 A).

B. Any municipality, corporation or person which, after due notice, continues to violate any regulation regarding atmospheric pollution established by the control Authority is deemed guilty of a misdemeanor and upon conviction is subject to a fine of not less than $10 nor more than $50 for the first offense and not less than $20 nor more than $100 for every succeeding offense (§ 142 A).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Massachusetts

2. Air Pollution Control Districts

I. General Statement

In 1960 the metropolitan air pollution control district, embracing Boston and vicinity, was established and provision was made for the forming of other districts on joint application of two or more contiguous political subdivisions. Air pollution in each district is controlled by the State Department of Health pursuant to regulations adopted for that purpose. The State is reimbursed by the subdivision in each district for expenditures made for control activities in it (§§ 142B, 142C).

II. Administrative Organization

A. Formation of air pollution control districts

1. By Acts of 1960, c. 676, a metropolitan air pollution control district, consisting of Boston and contiguous towns, was established. Upon application, additional contiguous cities and towns may be admitted to this district by State Department of Health (§ 142B).

2. Air pollution control districts are formed by two or more contiguous political subdivisions upon joint application to and approval by the State Department of Health (§ 142C).

B. Control of air pollution within districts (§ 142B)

The State Department of Health is charged with the control of the pollution of atmosphere within air pollution control districts.

C. Powers and duties of the State Department of Health (§ 142B)

1. After public hearing, to promulgate, amend, or repeal regulations.

2. To enter and inspect any property and stop and detain for inspection any motor vehicle in order to investigate any actual or suspected source of air pollution or ascertain compliance with any regulation. Trade secrets learned in the course of an inspection must be kept confidential upon request.

3. To order cessation or abatement of any violation of its regulations adopted pursuant to either § 142A or § 142B.

4. To maintain air sampling stations and devices, make or perform routine and special examinations, inspections, observations, determinations, laboratory analyses, and surveys, maintain records, and perform any other acts it deems necessary.

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[1] Citations refer to Annotated Laws of Massachusetts C. 111 and 1961 Cumulative Supplement

D. Financing (§ 142B)

The State is reimbursed for all expenditures for each district by the subdivisions of that district through local assessments based one-half on local assessed valuations and one-half on local population.

III. Violations and Penalties (§ 142B)

Failure to comply with any order of the State Department of Health to stop or abate violation of any of its air pollution regulations is punishable by a fine. Each day of violation constitutes a separate offense.

IV. Restraint of Violations (§ 142B)

Orders to stop or abate violation of any air pollution regulation of the State Department of Health may be enforced on petition of that department to the Superior Court, which has jurisdiction to restrain violations.

V. Miscellaneous

A. § 142B does not abrogate any of the powers or duties of any agency or political subdivision of the State.

B. Nothing in § 142B or any regulation adopted thereunder relieves a person from responsibility or liability for any damages which may occur or for civil or criminal proceedings arising out of or as a result of any action of that person, regardless of any action of the State Department of Health, and persons other than that department do not acquire actionable rights by virtue of such action.

VI. Repealed

Section 4 of Acts of 1960, c. 676, repealed effective October 3, 1961 the laws relating to local smoke control regulation in Springfield (Acts of 1900, c. 236), Worcester (Acts of 1921, c.37), and North Adams (Acts of 1941, c.526).

3. Tax Exemption for Pollution Control Devices.

Any equipment, facility or device installed on or attached to real property for the purpose of abating or preventing air or water pollution is exempt from taxation.

(S.B. 377 - Approved May 26, 1961)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Michigan

No specific authority relating to the control of air pollution by the State Health Department is provided (see sec. 14.1 et seq.).

Incorporated cities of the fourth class (population not exceeding 10,000) are authorized to prevent injury or annoyance from anything dangerous, offensive, or unhealthy, to prevent and abate nuisances, and to impose penalties on offenders (§ 5.1740 and § 5.1758).

Incorporated villages are authorized to abate nuisances and preserve the public health (§ 5.1285).

Local boards of health in townships are authorized to prevent all nuisances injurious to the health of township inhabitants (§ 14.68).

Cities incorporated under the Home Rule provisions of Michigan are given broad authority to provide for the public peace and health and for the safety of persons and property (§ 5.2073).

Under the Michigan Criminal Law, sec. 28.652 provides:

"Any person who shall own, operate or have in his possession any motor vehicle equipped with a device for producing excessive smoke or gas, or so equipped as to permit oil or any other chemical to flow into or upon the exhaust pipe or muffler of such vehicle or in any other way to produce or emit smoke or dangerous or annoying gases from any portion of such vehicle other than the ordinary gases emitted by the exhaust of an internal combustion engine under normal operation, shall be guilty of a felony."

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[1] Citations refer to Michigan Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Minnesota

The council or other governing body of each city in the State which now has or hereafter may have 20,000 and not more than 50,000 inhabitants is authorized to enact and provide penalties for the violation of ordinances to regulate the emission of dense smoke in the city (§ 461.07).

Such ordinances may define the meaning of dense smoke and declare the emission thereof to be a public nuisance and provide effective steps for its abatement (§ 461.08).

Any city of the third class in the State, is authorized, acting through its council, to regulate the emission of dense smoke from the smokestack of any locomotive, engine, stationary engine, or building within the limits of such city and to declare such emission of dense smoke to be a public nuisance and to provide for its summary abatement and in addition may impose a penalty not to exceed a fine of $700 or 90 days imprisonment (§ 461.09).

In 1957, § 144.12 was amended so as to authorize the State board of health to make regulations regarding atmospheric pollution which may be injurious or detrimental to public health. Such regulations have the force of law except insofar as they conflict with any statute or with the charter or ordinance of a city of the first class upon the subject. The board may require the taking out of licenses or permits to achieve its purpose of regulation. This statute became effective April 11, 1957. [§ 144.12 (14)]

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[1] Citations refer to Minnesota Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Mississippi

"The governing authorities of municipalities have power to make all needful police regulations necessary for the preservation of good order and peace of the municipality and to prevent injury to, destruction of, or interference with public or private property; to regulate or prohibit any mill, laundry, or manufacturing plant from so operating whereby the soot, cinders or smoke therefrom . . . may do damage to or interference with the use or occupation of public or private property . . ."(§ 3374-124).

"The governing authorities of municipalities have the power to . . . regulate and prescribe the construction and building of chimneys, smokestacks and smoke and hot-air flues." (§ 3374-150)

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[1] Citations refer to Mississippi Code 1942 Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

Missouri

I. General Statement

Missouri has several statutes regulating the emission of smoke. The emission or discharge into the open air of dense smoke within the corporate limits or any city of the State is declared to be a public nuisance (§ 71.760). There are special provisions relating to the emission of smoke near State-owned buildings (§ 564.050).

II. Administrative Organization

A. All cities to which sec. 71.760 applies are empowered to enact all necessary or desirable ordinances not inconsistent with the State constitution or statutes to carry out its provisions (§ 71.770).

B. Every city of the first class has power to control, regulate or prohibit the emission of dense smoke from the chimneys and chimney stacks of buildings, manufactories, locomotives or engines in any manner within the city (§ 74.145).

C. Every city of the second class has power to control, regulate and prohibit the emission of dense smoke from the chimneys and chimney stacks of buildings, manufactories, locomotives or engines in any manner within the city [§ 75.110(47)].

III. Violations and Penalties

A. Permitting the emission of dense smoke is a misdemeanor punishable, upon conviction in a court, by a fine of not less than $25 nor more than $100 (§ 71.760).

B. Each day of emissions constitutes a separate offense.

C. It is a good defense to show to the satisfaction of the jury that there is no known practicable means by which such emission of smoke could be prevented (Ibid).

IV. Smoke emission near State-owned buildings

A. It is prohibited to operate a factory or power plant where injurious smoke producing fuels are used in their boilers which emit smoke within 1500 feet or less of any State-owned building without equipping such boilers with a smoke preventive device (§ 564.050).

B. Operators of railroads must take reasonable precautions to prevent dense smoke emission from trains or roundhouses within 1500 feet of any State-owned building (Ibid).

C. Violation of sec. 564.050 constitutes a misdemeanor if within a reasonable time of receipt of written notice from the proper authority smoke preventive devices are not installed (§ 564.060).

D. Sections 564,050 and 564.060 do not repeal any existent State laws that give any cities the right to abate smoke nuisances within their limits (§ 564.070).

1/ Citations refer to Vernon's Annotated Missouri Statutes.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Montana

It is lawful for any county or incorporated city or town where injurious and unhealthy smoke and fumes exist, upon petition signed by at least 100 of the resident taxpayers of the county, city, or town, to make contracts with such persons or corporations as will, in the opinion of the board of county commissioners or city council best accomplish the purpose, for the abatement thereof and to issue and dispose of bonds for that purpose, subject to the limitations and conditions hereinafter provided (§§ 11-2501 and 11-2502).

An election, held upon proper notice, wherein the electors approve or disapprove the contract negotiated by the county, city or town and the bond issue necessary to carry it out is required (§§ 11-2504 and 11-2505).

1/ Citations refer to Revised Codes of Montana 1947 Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Nebraska

Cities having a population of 150,000 inhabitants or more have power by ordinance to provide for the abatement of dense volumes of smoke /§ 14-102 (33)/.

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[1] Citations refer to Revised Statutes of Nebraska 1943.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Nevada

The Nevada statute authorized air pollution control by county governments and incorporated cities, and provides for cooperative agreements between them.

Within the boundaries of their counties and within the corporate limits of their cities the boards of county commissioners and governing body of each incorporated city are granted "the power and authority, by ordinance regularly enacted, to regulate, control and prohibit, as a public nuisance, the excessive emission of dense smoke and air pollution caused by excessive soot, cinders, fly ash, dust, noxious acids, fumes and gases." (§§ 244.361, 268.410)

The boards of county commissioners and the governing bodies of incorporated cities in the county are authorized to enter into cooperative agreements with each other for the joint use of county and city personnel, equipment and facilities, upon such terms and conditions and within such areas within the county as may be determined for the promotion and protection of the health of the inhabitants of the county and city through the regulation, control and prohibition of the excessive emission of dense smoke and air pollution. (§ 277.070)

This Act became effective March 18, 1957.

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[1] Citations refer to the Nevada Revised Statutes.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

New Hampshire

1. Tax Exemption for Control Devices

New Hampshire provides for limited tax exemption (a percentage of the valuation of equipment effective in the control of air pollution) as determined by the Water Pollution Commission for "any treatment facility, device, appliance or installation (whether consisting of real or personal property or a combination of both) built, constructed or placed in operation by any person, firm or corporation in this State wholly or partly for the purpose of reducing, controlling, or eliminating any source of pollution" because of the "general public benefits resulting from the control of pollution in the surface waters or air of the State." (§ 149:5-a)

2. Auto exhaust

Chapter 205, Laws of 1961, amended RSA 263:46, dealing with mufflers on motor vehicles, to require, among other things, that the engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of "excessive fumes, smoke, flame, gas, oil or fuel residue." (Effective 27, 1961.)

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[1] Citations refer to New Hampshire Revised Statutes Annotated 1955.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

New Jersey

I. General Statement

The New Jersey "Air Pollution Control Act (1954)" created an Air Pollution Control Commission within the State Department of Health which was charged with the enforcement of regulations adopted by the commission for the purpose of controlling and prohibiting air pollution throughout the State (§ 26:2C-8-9).

"Air pollution" is defined as "the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards." (§ 26:2C-2)

II. Administrative Organization

A. Air Pollution Control Commission

1. Composition and organization

The Commission consists of 9 members, 3 of whom serve ex officio and are the State Commissioner of Health, the Commissioner of Labor and Industry, and the Secretary of Agriculture or a member of their respective departments designated by them, one citizen of the State representing the general public and 5 members appointed by the Governor with the advice and consent of the Senate from persons nominated by the New Jersey Health Officers Association, the New Jersey State Chamber of Commerce, the New Jersey Society of Professional Engineers, Inc., the New Jersey Manufacturers Association, and the New Jersey Section of the American Industrial Hygiene Association (§ 26:2C-3). A chairman and vice-chairman are elected annually by the commission from its membership (§ 26:2C-6). The appointed members of the Board serve for four years on staggered terms (§ 26:2C-4). All members serve without compensation but are reimbursed for expenses incurred (§ 26:2C-5).

Five members of the commission constitute a quorum to transact its business, except that any action must be by at least a majority vote of the entire commission (§ 26:2C-6).

2. Powers and duties

a. Employees

The commission has power to employ such employees as it may deem necessary (§ 26:2C-7).

b. Codes, Rules, and Regulations

The commission has power to formulate and promulgate, amend and repeal codes and rules and regulations controlling and prohibiting air pollution throughout the State but only after public hearing held after 30 days' prior notice thereof by public advertisement of the date, time and place of such hearing at which opportunity to be heard by the commission has been given to the public. No such code, rule or regulation, amendment or repeal may be effective, until 60 days after its adoption (§ 26:2C-8).

c. Hearings

Any hearing required by the Act to be held before the commission is held before 3 or more members of the commission designated by the chairman. Any member has power to subpoena witnesses, administer oaths and require the production of any relevant books or papers. Any information as to secret processes or methods of manufacture or production is not, insofar as practicable, to be disclosed in public hearing and is to be kept confidential (§ 26:2C-10).

d. County Air Pollution Control Associations

The commission is directed to organize a county air pollution control association in each county in which it determines that the establishment of such association is advisable to assist it in carrying out the purposes of the Act (§ 26:2C-11). The duty of each county association is to study air pollution problems of the county (§ 26:2C-12). Members of the association shall be residents of the county and are appointed by commission to serve without compensation.

e. Submission of Proposed Local Regulations to County Association

The commission is required to submit to the county air pollution control association of the county affected for discussion and report all codes, rules or regulations of strictly local application before they are adopted (§ 26:2C-13).

B. State Department of Health

1. Powers and Duties

The Department is directed to control air pollution in accordance with any code, rule or regulation promulgated by the commission and is empowered to:

a. Conduct and supervise research programs for the purpose of determining the causes, effects and hazards of air pollution.

b. Conduct and supervise State-wide programs of air pollution control education.

c. Require the registration of and the filing of reports by persons engaged in operations which may result in air pollution.

d. Enter and inspect any building or place, except private residences, to investigate an actual or suspected source of air pollution and to ascertain compliance with any code, rules and regulations of the commission.

e. Receive or initiate complaints of air pollution, hold hearings, and institute legal proceedings for the prevention of air pollution.

f. With the approval of the Governor, cooperate with, and receive money from the Federal Government, the State Government, or any county or municipal government or from private sources for the study and control of air pollution (§ 26:2C-9).

III. Procedures

A. In case any written complaint is filed with the department, or the department has cause to believe that any person is violating any code, rule or regulation promulgated by the commission, a prompt investigation is made and if a violation exists the department immediately endeavors to eliminate the source or cause of air pollution resulting from such violation by conference, conciliation and persuasion (§ 26:2C-14).

B. In case such negotiation fails to correct a violation within a reasonable time, the department is required to issue written notice and a copy of a complaint made by or to it to the persons complained against to answer such charges at a hearing before the department (§ 26:2C-15).

C. The respondent to such complaint may file a written answer, may appear at the hearing in person or by representative, with or without counsel and submit testimony, or both. Testimony is under oath, but the parties are not bound by the strict rules of evidence (§ 26:2C-16).

D. Any hearing required by the act to be held before the department is held before the State Commissioner of Health, or a member of the department designated by him, who has power to subpoena witnesses and compel their attendance, administer oaths and require the production of any books or papers relating to any matter under investigation in any such hearing (§ 26:2C-17).

E. Review of any final decision or action by the department or of the validity of any code, rule or regulation promulgated by the commission shall be by procedure in lieu of prerogative writs (§ 26:2C-20).

IV. Violations and Penalties

A. If at the hearing the department determines that a violation is occurring, it shall fix a reasonable time during which the offender is required to take measures to prevent such violation and to give periodic progress reports. Any trade secrets revealed by such progress reports are to be kept confidential (§ 26:2C-18).

B. If preventive or corrective measures are not taken in accordance with the order of the department, the department may institute a civil action in any court of competent jurisdiction or injunctive relief to prevent further violation of the code, rule or regulation. A penalty of $100 per week beginning with the 10th day after the expiration of the time fixed for the taking of preventive or corrective measures in the department's order may also be recovered (§ 26:2C-19).

V. Scope and Construction

This Act shall not impair any existing civil or criminal remedy for any wrongful action which is a violation of any code, rule or regulation of the commission nor supersede existing or future ordinances or regulations of any municipality or county or board of health not inconsistent with this act, nor shall it affect in any manner the powers, duties and functions vested in the State Department of Health by other provisions of law (§ 26:2C-21-23).

VI. This act became effective September 16, 1954. [§ 26:2C-1 (note)].

1/ Citations refer to New Jersey Statutes Annotated and 1961 Cumulative Annual Pocket Part.

2. Interstate Sanitation Commission

Chapter 105, Laws of 1961, (The Interstate Air Pollution Control Act), constitutes agreement by the State of New Jersey to the expansion of the powers of the Interstate Sanitation Commission to include studies of interstate air pollution problems between New York and New Jersey.

This Act is substantially similar in import to legislation enacted in 1960 by the State of New York (see pages 89-91 of DIGEST). Under the terms of these statutes, they became operative with the effective date--September 8, 1961--of the New Jersey Act.

The consent of Congress to this change in the terms of the Interstate Compact establishing the Interstate Sanitation Commission (49 Stat. 932) was granted in 1956 by P. L. 946, 84th Congress, 2nd Session.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

New Mexico

Incorporated cities and towns are authorized to declare what shall be a nuisance and to abate the same and to impose fines upon parties who may create, continue or suffer nuisances to exist (§ 14-21-30).

Incorporated villages are authorized to prevent the presence within their limits of anything dangerous, offensive, unhealthy or indecent and to cause any nuisances to be abated (§ 14-23-1).

1/ Citations refer to New Mexico Statutes 1953 Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS 1/

New York

1. Air Pollution Control Board

I. General Statement

In 1957 the State of New York created an Air Pollution Control Board within the State Department of Health for the purpose of controlling and abating existing and future air pollution in the interests of the public health and welfare /Title II, § 1268-1 (a); Title I, § 1266/. This legislation was enacted as Article XII-A of the Public Health Law.

"Air Pollution" is defined as "the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the State or throughout such areas of the State as shall be affected thereby; excluding, however, all conditions subject to the requirements of the labor law and industrial code." (Title I, § 1267-4) "Air contaminant" is defined as "a dust, fume, gas, mist, odor, smoke, vapor, pollen or any combination thereof." (Title I, § 1267-3) "Air contamination" is defined in § 1267-5 as meaning "the presence in the outdoor atmosphere of one or more air contaminants which contribute or which are likely to contribute to a condition of air pollution."

II. Administrative Organization

A. Air Pollution Control Board

1. Composition and organization

The Air Pollution Control Board within the Department of Health is composed of the following nine members: The commissioners of the departments of health, agriculture and markets, commerce, conservation, and labor or a deputy or other representative of each department designated by the Commissioner, and four members appointed by the Governor with the advice and consent of the Senate, one of whom shall be a representative of the medical profession, one of the engineering profession, one of industry and one of the political subdivisions of the State (Title II, § 1268-1). The Commissioner of Health is Chairman of the Board (Title II, § 1269-1). The appointed members of the Board serve for four years on staggered terms (Title II, § 1269-1).

The Board must meet at least quarterly. Special meetings may be called by the Chairman and must be called by him upon receipt of written request signed by two or more board members (Title II, § 1272).

Six members consitute a quorum to exercise code, rule and regulation making responsibilities; to transact any other business, five members constitute a quorum (Title II, § 1272).

2. Technical, scientific, legal and other services

Technical, scientific, legal and other services shall be performed by departments or agencies of the State without additional compensation (Title II, § 1274).

3. **Employees and advisers**

The Board shall have the power to employ and compensate such other personnel as it shall determine necessary to carry out the provisions of Article XII-A and shall prescribe their powers and duties (Title II, § 1275).

4. Codes, rules and regulations

A code, rule or regulation or any amendment or repeal thereof shall be approved in writing by at least six members of the Board and not by any deputy or representative (Title II, § 1276-1).

A code, rule or regulation or any amendment or repeal thereof shall not be adopted until after a public hearing within the area of the State concerned (Title II, § 1276-2).

5. Powers and duties

a. General authority

The Board is authorized to promulgate, amend, and repeal codes, rules and regulations for controlling or prohibiting air pollution in such areas of the State as shall or may be affected by air pollution and to include in such code, rules or regulations a general provision for controlling air contamination as the phrase "air contamination" is defined in § 1267-5 /Title II, § 1271-1 (a)/.

b. Establishing areas and degree of air pollution

The Board has power to establish areas of the State and prescribe the degree of air pollution or contamination that may be permitted therein /Title II, § 1271-1 (b)/.

c. Administrative powers

The Board shall have power to hold public hearings, conduct investigations, compel attendance of witnesses, receive such pertinent and relevant proof as it deems necessary, proper or desirable in order to effectively discharge its duties to control air pollution /Title II, § 1271-1 (c)/.

d. Enforcement

The Board may do such things as it deems necessary, proper or desirable in order to enforce codes, rules or regulations promulgated under Article XII-A, including instituting court proceedings to compel compliance, settling, or compromising, or making, modifying or cancelling orders which require the abatement of air pollution /Title II, § 1271.2 (h) (f) (g) (e)/.

e. Inspection

The Board shall have the power to enter and inspect any property and to detain and inspect any motor vehicle for the purpose of investigating either an actual or suspected source of air pollution or ascertaining compliance with any code, rule or regulation which it may promulgate under Article XII-A (Title II, § 1271 (a)).

f. Plans

The Board shall develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution [Title II, § 1271-4 (a)].

g. Cooperation with public and private agencies

The Board shall cooperate with the appropriate agencies of the United States or other States or interstate or international agencies with respect to the control of air pollution or for the formulation for submission to the legislature of interstate control agreements [Title II, § 1271-4 (d)].

h. Conduct of studies, investigations and research

The Board shall conduct studies and research with respect to air pollution control, conduct programs of air pollution control education, determine by field studies and samplings the degree of air pollution in New York State and develop demonstration programs in cooperation with local communities [Title II, § 1271-4 (e) (f) (g) (i)].

i. Training of personnel

The Board shall provide facilities and staff for training personnel of local communities in the principles of air sanitation [Title II, § 1271-4 (k)].

III. Procedures

A. If the Board shall have cause to believe that a violation of code, rule or regulation has occurred it shall initiate a prompt investigation. If such violation be found to exist the Board shall by conference, conciliation and persuasion try to eliminate the cause, but if this method shall fail, process shall be served in the same manner as a summons in a civil action or by registered mail (Title III, § 1279, 1280, - and 1278-2).

B. The Board is authorized to hold hearings, issue subpoenas requiring attendance and testimony of witnesses and the production of evidence relevant to matters involved at such hearings. In the case of refusal to obey a subpoena, the Supreme Court shall have jurisdiction to issue an order requiring obedience, and failure to comply with the order may be judged as contempt. Any information relating to secret processes, or methods of manufacture, or production which may be required, ascertained or discovered by the Board or those designated to conduct hearings shall not be disclosed in public hearings or otherwise and shall be kept confidential (Title III, § 1277-1 and 2, 1277-5, 1277-3).

C. Any final order or determination or other final action by the Board and the validity or reasonableness of any code, rule or regulation of the Board shall be subject to review as provided in Article 78 of the Civil Practice Act (Title III, § 1283-1).

Petition may be made for relief from any code, rule or regulation of the Board or from any determination, or order or other action which shall have been made or taken by the Board (Title III, § 1283-2 (b)).

IV. Violations and Penalties

A. If at a hearing the Board shall determine that the person against whom a complaint was made is violating any code, rule or regulation the Board shall fix a reasonable time during which such person shall take measures to prevent the violation (Title IV, § 1285).

B. For failure to take such required measures within the time fixed a penalty not to exceed $500 for the violation and not to exceed $100 for each day during which such violation continues may be imposed in a civil action (Title IV, § 1286-1).

C. For failure to take such required measures an action for an injunction must be brought by the Attorney General if the Board so requests (Title IV, § 1287).

V. Variances

A. The Board may suspend the enforcement of the whole or any part of any code, rule, or regulation if it is shown that enforcement would be inequitable or unreasonable or a hardship (Title V, § 1289).

B. No variance shall be granted where the person applying therefor is causing air pollution which constitutes a health hazard (Title V, § 1291).

C. Any variance granted shall not be construed as to relieve the person who shall receive it from any liability imposed by other law for the commission or maintenance of a nuisance (Title V, § 1291).

VI. Scope and Construction

A. The provisions of Article XIX-A shall apply to all areas of the State (Title VI, § 1293).

B. The purpose of the article is to provide additional and cumulative remedies to prevent air pollution and not to abridge or alter rights of action or remedies now or hereafter existing (Title VI, § 1294).

C. Persons other than the State shall not acquire actionable rights by virtue of this article (Title VI, § 1295).

VII. Effective Date

The act is effective July 1, 1957, except that the provisions of Article 12-A of the Public Health Law, as added by this act, insofar as they confer power upon the air pollution control board to adopt and promulgate codes, rules and regulations for prohibitng and controlling air pollution and to enforce compliance therewith become effective July 1, 1959 (§ 2, Air Pollution Control Act).

1/ Citations refer to McKinney's Consolidated Laws of New York Annotated, Book 44 - Public Health Law, and 1961 Cumulative Annual Pocket Part.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

New York

2. Interstate Sanitation Commission

I. General Statement

In 1960, the 1936 Act which established the Interstate Sanitation Commission was amended to extend the power of the Commission so as to enable it to engage in activities with respect to air pollution problems between New York and New Jersey. The Commission, which had been established as the result of a Tri-State Water Pollution Control Compact between New York, New Jersey, and Connecticut was given new powers and duties, subject to the enactment of substantially similar legislation by New Jersey. The primary effort of the Commission under this Act is to be directed to air contaminant solids, liquids, or gases which are toxic, disagreeable or irritant, or which are destructive. (§ 9-b)

II. Administrative Organization

A. Interstate Sanitation Commission

1. Composition and organization

The Interstate Sanitation Commission consists of five commissioners from each state, each of whom is a resident voter of the State from which he is appointed. (L. 1936, c.4, § 1, Art. II, § 1) Four New York commissioners are appointed by the governor with the advice and consent of the Senate, with the commissioner of health serving as the fifth. The commissioners serve four year staggered terms without compensation. (§ 1)

The Commission elects from its number a chairman and vice-chairman. A majority of its members from each State constitutes a quorum for the transaction of business, the exercise of any powers, or the performance of any duties, but no action is binding unless at least three members from each State vote in favor of it. It may meet at any time or place within the signatory States. (§ 2)

A separate division of interstate air pollution, established within the Commission and governed solely by the commissioners from New York and New Jersey, maintains separate financial accounts to reflect its direct and allocated costs and expenses in accordance with an accounting system set up by the full Commission. (§ 9-b)

2. Other services and funds

In carrying out its air pollution functions, the Commission makes use of the services, facilities and information of existing State, local and federal agencies whenever feasible and available. It may accept moneys, property and other donations or gifts from any person, public, private or governmental, real or artificial. (§ 9-b)

3. Employees and advisors

The Commission appoints and at its pleasure removes or discharges officers and legal, clerical, expert, and other assistants as it requires and it fixes and determines their duties, qualifications, and compensation. (§ 2)

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[1] Unless otherwise designated, citations refer to sections in Laws of New York, 1936, Chapter 3 as amended by Laws of New York, 1960, Chapter 823.

4. Rules and regulations, officers

The Commission adopts suitable by-laws and promulgates rules and regulations for its management and control. It may maintain one or more offices for the transaction of its business.

5. Powers and duties [2]

In pursuing its air pollution functions, the Commission is authorized:

a. to conduct studies;

b. to undertake research, testing, and development;

c. to gather, exchange, and disseminate information and to cooperate in solving air pollution problems;

d. to take samplings and to trace sources of air pollutants;

e. to refer complaints to an appropriate enforcement agency or agencies of the States in which the sources are located and to which air pollutants are carried, along with such data and information as it may have obtained with respect to the nature, characteristics, source, path and effect of air pollutants;

f. to make recommendations and reports to the governors and legislatures of the participating States. (§ 9-b)

III. Special Provisions

1. Trade secrets

No trade secret or secret process may be inquired into, whether with respect to one or more of the substances or one or more of the processes, operations, techniques or devices used in connection therewith. Wherever a trade secret or secret process is involved, activity is limited to identification of the device or facility from which the effluent discharged into the outer air derives, and the nature, rate and period of its emission. (§ 9-b)

2. Information obtained

All information obtained from sampling, tracing, or other specific inquiry is confidential and except as may be essential for referring a complaint for enforcement and for any enforcement proceeding, may be disclosed or published only in such a way as will not identify a given substance, process, operation, technique or device with the physical location or identity of the source plant or facility, the product made or service performed, or the persons using the same.(§ 9-b)

3. Copy of § 9-b

A printed copy of § 9-b must be furnished on request to any person furnishing information to the Commission and, in case of an inquiry at a plant or facility, to the person then in charge thereof. (§ 9-b)

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[2] The water pollution aspects of the Commission's powers and duties are omitted.

IV. Effective Date

The Act becomes effective when the State of New Jersey enacts legislation of substantially similar import and remains in effect so long as that legislation remains in force. (§ 9-b) Consent was given by the State of New Jersey to the expansion of the powers of the commission by Ch. 105, Laws of 1961 (The Interstate Air Pollution Control Act).

3. Motor Vehicle Pollution Control

Every motor vehicle manufactured or assembled after June 30, 1963 and registered in the state is required to be equipped with a crankcase ventilating system of a type approved by the State air pollution control board. Motorcycles, electric cars and special purpose commercial vehicles (see § 401.7 of Vehicle & Traffic Law) are excepted.

(§ 375.28a, Vehicle and Traffic Act, as amended by Ch. 994, L. 1962
Act of April 30, 1962)

4. State Grants to Municipalities

Effective April 1, 1962, state grants amounting to 50% of the first million dollars expended in the fiscal year are authorized for Cities of over one million population with air pollution control programs conducted by agencies other than the city health department pursuant to standards prescribed by the Commissioner of Health.

(§ 608 (e), Public Health Law as amended by Ch. 737. L. 1 62)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

North Carolina

Smoke Control By Cities

All cities have the power to regulate the emission of smoke within the city but no regulation relative to the emission of smoke shall extend to the acts of an employee or servant of a railroad company in making necessary smoke when stoking or operating a coal-burning locomotive [§ 160-200 (32)].

Public Nuisance Provisions

The governing body of a city or town or officer who may be designated for the purpose by the governing body has power summarily to remove, abate, or remedy, or cause to be removed, abated or remedied everything in the city limits, or within a mile of such limits, which is dangerous or prejudicial to the public health; and the expenses of such action shall be paid by the person in default, and if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes (§ 160-234).

The board of commissioners of a town may pass laws for abating or preventing nuisances of any kind and for preserving the health of the citizens. Provided, however, it shall not be a nuisance for an employee or a servant of a railroad company to make necessary smoke when stoking or operating a coal-burning locomotive (§ 160-55).

Whenever and wherever a nuisance shall exist which in the opinion of the local health director is dangerous to the public health, it shall be his duty to notify in writing the person or persons responsible for its continuance, of the character of the nuisance and the means of abating it. The person or persons so notified shall proceed to abate the nuisance; provided that the person or persons so notified, within a reasonable time may appeal from the decision of the local health director to the local board of health. Upon receipt of notification of such appeal the local board of health shall grant a hearing, and if upon hearing of the matter, the local board of health finds that a nuisance does exist which is dangerous to the public health, then the person or persons responsible for the nuisance shall promptly proceed to abate it; provided that such person or persons may appeal from the decision of the local board of health to the superior court. If the person or persons responsible for the nuisance fails to abate it after notification by the local health director or after order to do so by the local board of health upon appeal to it or after order to do so by the superior court upon appeal to it, he shall be guilty of a misdemeanor.

Whenever and wherever a nuisance shall exist which is dangerous to the public health and such nuisance is of a character as to require in the interest of the public health immediate abatement or discontinuance the local health director may bring a proceeding in the superior court of the county in which the nuisance exists for the abatement of such nuisance and the superior court may upon hearing and for good cause shown enjoin the continuance of the condition creating the nuisance, irrespective of all other remedies at law (§ 130-20).

Injuries remediable by the old writ of nuisance are subjects of action as other injuries, and in such action there may be judgment for damages, or for the removal of the nuisance or both (§ 1-539).

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[1] Citations refer to General Statutes of North Carolina.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

North Dakota

A nuisance is defined, inter alia, as unlawfully doing an act or omitting to perform a duty, which act or omission annoys, injures or endangers the comfort, repose, health or safety of others (§ 42-0101). The remedies against a public nuisance are (1) indictment, (2) filing an information, (3) bringing a criminal action before a justice of the peace who has authority to bind defendant over to the district court, (4) civil action or, (5) abatement (§ 42-0107). The attorney-general, his assistant, the state's attorney, or any citizen of the county where a common nuisance exists or is maintained may bring an action in the name of the state to abate and perpetually enjoin the nuisance (§ 42-0201).

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor (§ 42-0115).

The remedies against a private nuisance are (1) a civil action or (2) abatement (§ 42-0103).

When it is necessary for the protection of the public health to abate or remove any nuisance, source of filth, or cause of sickness found on private property, the local board of health shall cause a notice to be served on the owner or occupant thereof requiring him to remove the same at his own expense within a reasonable time, not to exceed twenty-four hours. If the owner or occupant refuses or neglects to comply with such notice or if the nuisance, source of filth, or cause of sickness exists on the property of nonresident owners or upon property the owners of which cannot be found, the board of health shall cause the nuisance, source of filth, or cause of sickness to be removed or destroyed under its direction, at the expense of the county, city, village, or township, as the case may be, but such expense shall be charged against the lots, pieces, or parcels of land upon which the work was done (§ 23-0504).

Whenever a local board of health deems it necessary for the preservation of the public health to enter any building within its jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into such building, any member of the board may make complaint under oath to a justice of the peace within the jurisdiction of the board, stating the facts in the case so far as he has knowledge thereof. The justice thereupon shall issue a warrant directed to the sheriff or other peace officer commanding him to destroy, remove, or prevent between the hours of sunrise and sunset, the nuisance, source of filth or cause of sickness, under the direction of such members of the local board of health as accompany him (§ 23-0506).

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[1] Citations refer to North Dakota Century Code.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Ohio

I. General Statement

By statute approved June 10, 1957 section 3701.04.1 was added to Chapter 370 (entitled "Department of Health") of the Ohio Revised Code relative to the conduct of air pollution research by the department of health and assisting political subdivisions in the abatement of air pollution.

> "Atmospheric pollution" is defined as "the presence, in the out-of-door atmosphere, of substances which are injurious to humans, crops, or animals." (§ 3701.04.1)

II. Administration

The duties and powers set forth in the statute are assigned to the director of health (§ 3701.04.1).

III. Powers and duties

The director of health is required to:

A. Maintain a laboratory to provide services necessary for the furtherance of air pollution abatement.

B. Develop methods of study of atmospheric pollution and conduct research within the state.

C. Advise, consult, and cooperate with other agencies of the State, the federal government, other States, interstate agencies, political subdivisions, and industries in furtherance of atmospheric pollution prevention and abatement.

D. Encourage, participate in, or conduct studies and research relating to the prevention of atmospheric pollution.

E. Collect and disseminate information relating to atmospheric pollution and the prevention, control, and abatement thereof.

F. Accept and administer grants from the federal government or other sources, public or private, for carrying out any of these functions. (§ 3701.04.1)

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[1] Citations refer to Page's Ohio Revised Code Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Oklahoma

General Statement

Oklahoma does not have a general air pollution control statute nor has it enacted specific enabling legislation in the field. Local activity would therefore have to rely on public nuisance provisions. The Act of June 26, 1961, authorized the State Department of Health to encourage, participate in and conduct studies, investigations, training, demonstrations and research relating to the measurement and control of air pollution and its effects on health. The Department is also designated as the State agency to cooperate with the United States Public Health Service in the administration of air pollution control programs.

(S.B. 320 - Laws of 1961)

Public Nuisance Provisions

63 § 4, provides that the State Board of Health has the duty to take proceedings to have abated a nuisance calculated to affect injuriously the health of the public or any community.

"If any board of health or any county or city superintendent of public health in this State shall order the owner or occupant of any private premises, at his own expense, to remove any nuisance, source of filth, or cause of sickness found there, within twenty four hours, or within such other time as it shall be considered reasonable, and such owner or occupant refuses and neglects to comply with such order, he shall be fined therefor not more than twenty-five dollars for every day he knowingly violates such order. Such order shall be in writing and may be served personnally on the owner, occupant or his authorized agent, by any person authorized to serve civil process, or a copy of the order may be left at the last usual place of abode of the owner, occupant, or agent if he is known, and within the State. If the premises are unoccupied and the residence of the owner or agent is unknown, or is without the State, the board or county or city superintendent of public health may order the notice to be served by posting it on the premises and by advertising it in one or more newspapers (63 § 25)."

"If any person is convicted on an indictment or information for a common nuisance to the public health, the court may order the nuisance to be removed, or destroyed, at the expense of the defendant, under the direction of the State, city, township or town board of health (63 § 26)."

Tit. 21, Part V, entitles "Crimes Against Public Health and Safety", provides:

> "Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor (21 § 1191)."

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[1] Citations refer to Oklahoma Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Oregon

I. General Statement

A. Summary

In 1961, the Oregon legislature enacted a comprehensive Air Pollution Control Act to be administered by the Sanitary Authority of Oregon. (Sec. 4) Regulations issued by the Sanitary Authority under the 1959 Act (Sec. 449.030, O.R.S.) are in continued effect, insofar as they do not conflict with the later statute, until amended or new regulations are adopted, and in no event more than six months from the effective date of the statute. (May 22, 1961)

It is the declared policy of the State to maintain such a reasonable degree of air purity that the least possible injury be done to human, plant or animal life and to property, and consistent with the economic and industrial well-being of the State. The control program shall be undertaken in a progressive manner and each of its successive objectives sought to be accomplished by a maximum of cooperation and conciliation. (See 1) The purpose of the Act is to control and abate existing air pollution and prevent new air pollution under a program consistent with the stated policy. (Sec. 2)

B. Definitions

"Air contaminant" means a "dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof." (Sec. 3(2)).

"Air Pollution" means the presence "in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant, or animal life or to property or which unreasonably interfere with enjoyment of life and property throughout the State or throughout such area of the State as shall be affected thereby." (Sec. 3 (3))

"Air contamination" means "the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution." (Sec. 3 (4))

"Area of the State" means "any city or county or portion thereof or other geographical area as may be designated by the Sanitary Authority." (Sec. 3(7))

II. Administrative Organization

A. Sanitary Authority--Membership

The powers and duties prescribed by the Act are vested in the Sanitary Authority. (Sec. 4) The Authority is a division within the State Board of Health and is composed of 6 members: the State Health Officer, State Sanitary Engineer, Chairman of the State Fish Commission and 3 members appointed by the Governor for a term of 4 years (Sec. 449.015, 449.020, O.R.S.). The State Sanitary Engineer is Secretary of the Authority (Sec. 449.025, O.R.S.)

B. Duties and Powers

1. The State Sanitary Authority is directed to (sec. 6):

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[1] All citations are to Ch. 426, Laws 1961, unless otherwise indicated. This Act is codified as sections 449.760 - 449.830 of Chapter 449, Oregon Revised Statutes.

(a) Develop a comprehensive plan for control or abatement of existing air pollution and for prevention of new air pollution, recognizing varying needs of different areas;

(b) Encourage cooperative activities and the imulation and executor of plans for air pollution control, air pollution agencies, associations, industries, etc;

(c) Cooperate with federal agencies, and receive and spend funds from federal public or private agencies for air pollution control functions;

(d) Conduct studies, demonstrations, research, and educational programs relating to air pollution control and provide technical advisory services to local communities; and

(e) Enforce statutes relating to air pollution.

2. The authority has power to:

(a) Establish areas of the State and prescribe air purity standards for the degree of air contamination or pollution permitted therein. Such standards shall take into account such factors as: the quantity and nature of air contaminants; topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the area, the availability and economic feasibility of air-cleaning devices, effect on human health and enjoyment of life and danger to property from air contaminants, the effect on industrial operations of remedial measures and other applicable standards;

(b) Establish air quality standards for the State or an area, establishing the maximum amount of air pollution permissible in various kinds of air contaminants from different sources or classes thereof, after public hearing before making any specific order concerning air pollution in an area if such standards can be established. (Sec. 7) Notice of public hearing on air quality standards must be published prior to the hearing (Sec. 8). Oral and written objections may be submitted and the standards shall be established within 90 days after the hearing. Standards are deemed general regulations of the authority (Sec. 8);

(c) Require the submission of plans for any air-cleaning device but cannot require any particular means to meet the standards (Sec. 9);

(d) Adopt rules and regulations effective State-wide or in areas to control air pollution (Sec. 10 (1));

(e) Conduct hearings, investigations, subpoena witnesses, etc., and make findings of fact and determinations (Sec. 10(2));

(f) Enforce penalties, except that no penal action may be taken against State, its agencies or local governments or their employees (Sec. 10(4));

(g) Compel compliance with rules by judicial proceedings (Sec. 10 (5));

(h) Enter and inspect, after due notice and at reasonable times, any premises to investigate compliance. Trade process information obtained shall be kept confidential and not made part of hearing public record. Analysis reports of air samples taken on premises shall be provided to person concerned (Sec. 10 (7)); and

(i) Require production of pertinent books and papers (Sec. 10 (8).

III. Enforcement Procedures (Sec. 11)

A. Investigation

On complaint or on its own motion, the authority shall investigate any alleged violation of regulations and orders, and if it finds such violation exists, endeavor to eliminate the cause of air pollution by conference, conciliation and persuasion.

B. Hearing

If voluntary compliance is not obtained, the authority shall serve a complaint setting forth in detail the conditions complained of, together with notice of public hearing. The respondent may appear or file written answer. The burden of proof is on the authority, which shall, after due consideration of the evidence make an appropriate order or determination in accordance with O.R.S. Chapter 183.

C. Judicial Review

All orders, rules, regulations and determinations are subject to judicial review by any party to the original proceeding or by any person aggrieved thereby, within one year after they become final (Sec. 12).

D. Injunctive Relief

The authority may sue for an injunction to prevent violation of specific final orders and to compel compliance (Sec. 13).

E. Penalties

Violation of any rule, regulation or final order of the authority is a misdemeanor, and each day of violation a separate offense. Refusal to produce books, papers or information is also a misdemeanor (Sec. 16).

No violation due to Act of God, war, strife, riot or other condition not proximately caused by negligence or wilful misconduct shall be subject to any liability (Sec. 14).

IV. Exemptions and Variances

A. Exemptions

Agricultural operations, land clearing and grading, private outdoor fireplaces and barbecues, fires set or permitted by public officers for civil defense or fire fighting instruction, weed abatement or elimination of fire hazards are exempted from the Act (Sec. 5).

B. Variances (Sec. 15)

1. The authority may grant specific variances from any requirement to specific persons or class of persons or specific air contamination sources, upon conditions necessary to protect the public health and welfare, if it finds strict compliance is inappropriate because of conditions beyond the control of the persons involved, or because of special circumstances which would render strict compliance unreasonable, burdensome or impractical, or would result in substantial curtailment or closing down of a plant or operation or because

no alternative facility or method is available. Such variances may be limited in time.

2. The Authority may delegate power to grant variances to legislative bodies of governmental units in any area.

3. In considering variances, the granting authority shall weigh all equities involved and the advantages or disadvantages to the residents and the activity.

4. A variance may be revoked or modified by the grantor after a public hearing with not less than 10 days' notice to all persons likely to be affected by the revocation or modification.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Pennsylvania

1. Air Pollution Control Act

I. General Statement

In 1960, the legislature enacted the Air Pollution Control Act creating an Air Pollution Commission, establishing Regional Air Pollution Control Associations, and providing for a system of air pollution control regulation on the State and local levels. It declared as its policy the maintenance of such a reasonable degree of air purity as is technically feasible, economically reasonable, and necessary for the protection of normal health, general welfare, and property. (35 §§ 4001, 4002)

II. Administrative Organization

A. Air Pollution Commission

1. Organization and composition

The Commission created within the Department of Health consists of the Secretaries of Health, Commerce, Labor and Industry, Mines and Mineral Industries, and Agriculture, a member of the general public, an industrial toxicologist with air contaminant experience, three State industry (manufacturing or public utility) representatives competent in matters of air pollution control, one of whom must be licensed engineer trained therein, and an additional licensed engineer so trained. [35 § 4005 (a), (b), (c)]. Public members are appointed by the Governor with the advice and consent of two-thirds of all the members of the Senate, serve 4 years, and receive a per diem of $25 plus actual expenses. A chairman and vice-chairman are elected by the Commission biennially. [35 §§ 4005 (a), (d), (e)]

2. Powers and duties [35 § 4005 (f)]

a. Determine and certify regions and subregions.

b. Adopt, in accordance with the Administrative Agency Law, rules and regulations for the control of air pollution in regions, after reviewing Department studies thereon and comments of interested associations. Adopt regulations for the conduct of business.

c. Hold at least six meetings per year at the call of the chairman.

d. Hear and determine in accordance with the Administrative Agency Law all complaints of alleged violations of its regulations referred to it by the Department and Associations.

e. Prescribe a complaint form which shall be made available to complainants through Associations.

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[1] Citations refer to Purdon's Pennsylvania Statutes Annotated and 1961 Cumulative Annuel Pocket Part.

f. Require measures for the minimization of air pollution, order compliance with its regulations, and stipulate a time for compliance with its orders.

g. Establish maximum permissable air contaminant quantities for various conditions in various areas.

B. Department of Health

1. Powers and duties (§ 4004)

In accordance with the policies of the Commission, the Department shall:

a. Inspect and investigate air pollution sources and ascertain compliance with Commission regulations, keeping confidential trade secrets, and promptly furnishing the suspected polluter with a duplicate analytical report of any samples taken in the course thereof; have access to and require production of pertinent books and papers; and receive and initiate complaints, forwarding them to the interested Association, or if more than one is interested, to the Commission.

b. Institute complaints, conduct testing and sampling programs, make observations of pollution causing conditions, make tests at contamination sources, and assess the degree of abatement required.

c. Upon request of the Commission secure court proceedings to enforce orders and act as Commission agent in public hearings; and enforce compliance with Commission regulations.

d. Recommend personnel job qualifications for new county and municipal air pollution control agencies.

e. Consider for approval plans and specifications for air pollution control methods submitted, require such submission at the request of the Commission and inspect installations or modifications for conformity with plans.

f. Conduct research on the nature and control of air contaminants; determine the degree of locally existent air pollution; develop and submit to the Commission a comprehensive State-wide air pollution control plan; encourage plans with control agencies and associations of municipalities whereby sources of contamination may be located and abated; and encourage voluntary air pollution control and reduction.

g. Conduct educational programs with respect to control, prevention, abatement, and reduction; conduct, with local communities, control demonstration programs; and provide technical consultative services to local communities and Associations.

h. Cooperate with Federal, interstate, or other State agencies and where appropriate, formulate compacts or agreements for submission to the Legislature; receive and expend Federal or other moneys for research.

i. Do whatever else is necessary and proper for effective enforcement of the Act and regulations promulgated thereunder.

2. The Act does not limit other Department powers to control and abate nuisances as provided in 71 § 531 (35 § 4011).

C. Regional Air Pollution Control Associations

1. Organization and composition

In each region designated by the Commission there shall be an Association comprised of a representative of industry and of labor, a county commissioner of one of the encompassed counties, and a resident of each such county, all appointed by the Governor. Associations are autonomous insofar as their business is concerned. [35 § 4006 (a), (c)]

2. Powers and duties [§ 4006 (b)]

a. Review and comment upon proposed Commission local regulations within 90 days of receipt thereof.

b. Suggest suitable local regulations to the Commission.

c. Consider local complaints, attempting to resolve them voluntarily, and reporting thereon within six months. When voluntary resolution cannot be brought about, complaints shall be referred to the Commission for action. If a second complaint follows within 60 days of a report of a satisfactory disposition the complaint shall be forwarded forthwith.

d. Cooperate with local persons to develop a regional control program.

e. As necessary, avail itself of technical services and clerical assistance from the Department, enter into an agreement therewith for reimbursement of its expenses, and provide headquarters which, absent a cogent reason, shall be in the Department's regional office.

f. Hold at least four meetings per year at the call of the Commission's Chairman.

g. Submit to the Commission a copy of complaints received and action taken thereon.

D. Political subdivisions

Local air pollution control ordinances not conflicting with the Act are specifically permitted. Cities and counties having air pollution agencies are excepted from the Act except as to any source located therein the effects of which extend without. Nothing in the Act limits powers conferred elsewhere upon counties of the first and second class to enact and enforce air pollution and smoke ordinances. (35 § 4012)

III. Procedures

A. Public Hearings

Public hearings by the Commission or the Department acting in its behalf must precede adoption of regulations. They are held in the region or area affected upon 30 days notice in a newspaper of general circulation. All persons in attendance are heard on the subject of the hearing and anyone may submit his views thereon within 30 days. In addition the Commission may solicit views in writing of interested persons. Information relating to trade secrets shall not be disclosed at hearings or otherwise. Copies of hearing transcripts shall be available to interested parties at prevailing rates. (35 § 4007)

B. Appeals

Persons aggrieved by any order, decision, or determination of the Commission have a right to appeal as provided by the Administrative Agency Law [35 § 4006 (g)].

IV. Violations and Penalties

A. Unlawful conduct

Refusal to comply with Commission regulations, participating in violation thereof, or interfering with Department functions under the Act is unlawful (35 § 4008).

B. Penalties

1. Any person engaged in unlawful conduct, upon conviction at summary proceeding, is fined. Conviction of a third or subsequent offense is a misdemeanor. Violations on separate days are separate offenses. (35 § 4009)

C. Injunction

In addition, the Commission may request the Attorney General to petition for injunctive relief. (35 § 4010)

V. Miscellaneous

A. The provisions of the Act are severable (35 § 4014).

B. The Act became effective January 8, 1960. It was provided that regulations promulgated thereunder would not become effective until January 8, 1960 (35 § 4015).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Pennsylvania

2. Townships, Cities, Boroughs, Counties

A. The board of township commissioners of a township of the first class has power to regulate the emission of smoke from chimneys, smokestacks and other sources except locomotive smokestacks (53 §§ 56502 and 56529).

B. Cities of the second and third class may by ordinance regulate the production or emission of smoke (53 §§ 23164 and 37403).

1. Cities of the second class may regulate by ordinance the production or emission of smoke from any source (53 § 23164).

2. Cities of the third class may by ordinance: (53 § 37403)

   a. regulate the construction and inspection of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges or any apparatus used in any building, factory, or business.

   b. order the suppression or cleaning of the devices listed in a. above.

   c. regulate the production and emission of smoke or fly ash from any source except from railroad locomotives.

C. The corporate officers of a borough have power to regulate the emission of smoke from chimneys, smokestacks, and other sources, except from locomotive smokestacks (53 §§ 46202 and 46251).

D. The board of commissioners of a county of the second class is authorized to regulate by resolution or ordinance the emission of smoke from any chimney, smokestack or other source within the county. The regulations may provide for collection of fees and for fines and penalties. That the board may provide by regulation for permits is implied by the authorization of the collection of fees therefor (16 § 5195).

The board may borrow, appropriate and expend money, may appoint enforcement officers and authorize the employment of other personnel and may acquire property, all for the purpose of regulating the emission of smoke (16 § 5196).

Violation of a resolution or ordinance constitutes a misdemeanor punishable by a fine not to exceed $100 and as prescribed by the resolution or ordinance. In default of payment the violator is to be imprisoned for a period not to exceed 30 days (16 § 5197).

The board may determine the effective date of any resolution or ordinance and in so doing shall take into consideration the availability of fuel burning devices suitable for burning high volatile bituminous coal smokelessly (16 § 5195).

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[1] Citations refer to Purdon's Pennsylvania Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Puerto Rico

Anything which is injurious to the health, or indecent, or offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered (T. 32, § 2761).

Anything which is injurious to health, or is indecent or offensive to the senses or is an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons is a public nuisance. The emission of smoke from useful manufacturing enterprises except in municipalities of Class I is not a public nuisance unless it is shown by proof in court that the health of a considerable number of persons is injuriously affected thereby. But nothing in the Act prohibits the council of any municipality from passing ordinances to require manufacturing enterprises to use devices to prevent the unnecessary emission of smoke, cinders and soot to the injury and prejudice of the inhabitants in cities and towns (T. 33, § 1365).

A person who maintains or commits a nuisance or refuses to perform any legal duty relating to the removal of a public nuisance is guilty of a misdemeanor (T. 33, § 1365).

A person who violates the terms of a proclamation in relation to the public health issued by the Governor or who violates any regulations issued by the Secretary of Health is guilty of a misdemeanor (T. 33 § 1365).

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[1] Citations refer to laws of Puerto Rico Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Rhode Island

I. General Statement

The statute provides for three methods of smoke abatement: (1) compliance with statutory definition of smoke as a nuisance; (2) adoption by a city council of certain statutory provisions including a specified maximum density of smoke permitted; (3) grant of power to a city to regulate pollution by ordinance, in accordance with the statute. The only compulsory control appears to be that imposed by statute on cities having a population of 150,000 or over.

II. Administrative Organization

A. Cities of 150,000 population or more

1. Defined as a public nuisance is "the issue or emission of dense or thick black or gray smoke from any smokestack or chimney used in connection with an engine, steamboiler, or furnace of any description for a longer period than five (5) minutes at any one (1) time within such city." This does not apply to chimneys of buildings used exclusively for private residences or to locomotives during the time of starting or feeding fires while in roundhouses or roundhouse yards (§ 23-25-1).

2. Those who have the right to control the sources of smoke emission and permit such emission declared a nuisance are guilty of operating a public nuisance (§ 23-25-2), and subject to a fine of from $10 to $100 for each offense and each day constitutes a separate offense (§ 23-25-3).

3. The city council may appoint a supervising engineer to inspect and supervise sources of smoke. He may enter buildings for such purpose and anyone who hinders his entrance is subject to a fine of $20 to $50 for each offense (§ 23-25-4).

B. Cities of 20,000 population or over

1. Such cities may adopt statutory section 23-25-6 to 23-25-20 (§§ 23-25-5 and 23-25-7).

2. Smoke inspector

    a. Such city must elect a smoke inspector (§ 23-25-7) who is a mechanical engineer or qualified by three years practical experience (§ 23-25-8).

    b. Powers and duties

        (1) May inspect sources of smoke (§ 23-25-8)

        (2) May enter buildings in the daytime to perform inspection duties (§ 23-25-9).

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[1] Citations refer to General Laws of Rhode Island 1956.

(3) Charged with enforcement of statute (§ 23-25-11).

(4) Required to show records to city council (§ 23-25-11).

(5) Must give notice to statutory violators (§ 23-25-12).

3. Maximum density of smoke

In cities to which §§ 23-25-5 to 23-25-20 apply the emission of smoke of a degree of darkness or density equal to or greater than that of Ringelmann No. 3 from any stack, except stacks of locomotives, for any period or periods in the aggregate exceeding 6 minutes in any one hour, or from any stack of a locomotive for any period or periods in the aggregate exceeding 1 minute, in any period of 5 minutes is a public nuisance and prohibited; except that between 5 a.m. and 7 a.m., while any fire is being built or rebuilt after cleaning, including cleaning in any foundry cupola or a locomotive while resting in a roundhouse or roundhouse yard, the emission of smoke of such darkness therefrom, by means of any stack connected therewith, for any period or periods in the aggregate not exceeding 15 minutes in any 1 hour, is permitted; and the emission of smoke of such darkness from the stack of any locomotive when unexpectedly stopped by breakdown, signal or sudden emergency for a period not exceeding 3 minutes is permitted (§ 23-25-14).

4. Permits

a. A permit must be secured from the smoke inspector before a new plant or reconstruction of an existing building for producing power and heat may be constructed (§ 23-25-16).

b. Upon issuance of a permit the smoke inspector must notify the building inspector (§ 23-25-18).

c. The possession of a permit does not exempt the holder from prosecution on account of the emission of smoke in violation of the provisions of this statute (§ 23-25-20).

5. Violations and Penalties

a. Fines from $20 to $50 may be imposed for hindering a smoke inspector from entering a building to perform his duties (§ 23-25-9).

b. When, after giving proper notice to a violator, no bona fide effort has been made within 30 days of the notice to overcome the violation and within 6 months compliance has not resulted the smoke inspector is required to report the facts to the proper office for prosecution (§ 23-25-13).

c. A violation of the statutory maximum standard of smoke emission (§ 23-25-14) is subject to a fine of from $10 to $100 for each offense, each day constituting a separate offense (§ 23-25-15).

d. For construction in violation of the statute and without a permit a fine not exceeding $25 per day may be levied and prosecution of the work may be enjoined (§ 23-25-19).

6. Adoption of §§ 23-25-6 to 23-25-20 supersedes the application to such city of §§ 23-25-1 to 23-25-4.

C. **City or town of any size**

1. A city or town of any size may, in accordance with §§ 23-25-22 to 23-25-27, regulate by ordinance air pollution within its boundaries (§§ 23-25-21).

2. The ordinance (a) must define the extent of air pollution prohibited; (b) may establish exemptions as to source, as to permitted periods of discharge of smoke, or other substances (§ 23-25-3); (c) may provide for rights of entry for inspection and (d) may require permits for construction or alteration of fuel consuming equipment (§ 23-25-24); (e) may provide for fines up to $100 for each violation (§ 23-25-25); (f) may provide for the adoption of rules and regulations by an officer having the duty of smoke inspector (§ 23-25-26).

3. Acceptance by a city or town of §§ 23-25-22 to 23-25-27 supersedes the application of §§ 23-25-1 to 23-25-20 to such city or town (§ 23-25-27).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

South Carolina

1. Local Controls

In counties which have cities of 65,000 inhabitants or more it is unlawful for any manufacturer of acids or other distillations of a corrosive nature or of acrid odor, offensive or dangerous to human or plant life, to discharge into the air fumes from such manufacture without first treating such fumes to render them innocuous, inoffensive and harmless to human or plant life (§ 32-1851).

A violation of the provision is a misdemeanor and upon conviction punishment is in the discretion of the court (§ 32-1851).

The limit of liability in civil actions based on such violation is actual damages sustained by the plaintiff (§ 32-1852).

2. Study Committee

In 1960, the legislature created a committee to make a continuous study of matters pertaining to the peaceful uses of atomic energy, the control of air and water pollution, and the use of radioactive materials. The committee is composed of three State Senators, three State Representatives, and five appointees of the Governor: One to represent industry and business; one, banking; one, labor; one, agriculture; and one, the medical profession. It studies the development and utilization of, inter alia, air pollution aspects of utilization of atomic energy, and reports to the General Assembly from time to time with legislation, if any, that it considers necessary to encourage participation in the development and utilization of atomic energy, fissionable materials, radioactive matter, and related subjects for peaceful purposes to the maximum extent compatible with the security, the health and safety of the public. It also considers the relative responsibility of the State and its respective subdivision thereto with relation to all such matters and all agencies of the State to assist it in its work (L. 1960, Act 831). (§ 1-388)

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[1] Citations refer to Code of Laws of South Carolina 1952 and 1960 Supplement, as amended through the 1960 Regular Session.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

South Dakota

Section 58.0201 provides:

> "Each organized township in the State is a body corporate and has power:
>
> * * *
>
> "(6) When unincorporated town is within its limits:
>
> * * *
>
> "(d) To abate any nuisance found, within its corporate limits."

Section 45.0201 provides:

> "Every municipality shall have power:
>
> * * *
>
> "(34) To declare what shall constitute a nuisance and prevent, abate, and remove the same.
>
> "(35) To do what may be necessary or expedient for the promotion of health or the suppression of disease."
>
> * * *

Section 27.2102 provides:

> "The township board of health may examine into all nuisances . . . and causes of sickness within the township. Such board may make such rules or regulations respecting the same as it may judge necessary for the public health and safety of the inhabitants."

Chapter 37.47, which codifies the law of nuisance, authorizes three remedies:

(1) civil action;

(2) abatement; and

(3) in the case of a public nuisance, indictment or information. (§37.4707)

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[1] Citations refer to South Dakota Code of 1939.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Tennessee

I. General Statement

The 1959 "Air Pollution Control Act" authorized the establishment of an Air Pollution Control Service and defines air pollution as "the presence of materials, be it gaseous, liquid or solid, or a combination thereof, or physical conditions or phenomena in the atmosphere outside the confines of building and structures in such a manner or concentration as to create a nuisance, or to have detrimental effect on health, or on property and its utilization, but shall not include any aspects of employer-employee relationships." /§ 53-3402.(b)/

II. Administrative Organization

A. The State Department of Public Health is authorized to create an Air Pollution Control Service to administer the Act (§ 53-3403).

B. The Commissioner of Public Health is authorized to employ necessary personnel and to expend funds appropriated for the purposes of this Act, Federal grants-in-aid, and gifts made specifically for this purpose (§ 53-3403).

C. The Service is authorized to: (§ 53-3404)

1. Advise, consult and cooperate with other State agencies, political subdivisions, industries, the Federal Government and other interested groups on matters relating to air pollution.
2. Collect and disseminate information relating to air pollution.
3. Encourage and conduct studies, investigations and research on air pollution.
4. Encourage local agencies to handle air pollution problems to the best of their abilities.
5. Provide technical assistance and cooperation to local and regional control programs.

D. The Act authorizes entry to inspect all buildings, except those used exclusively for human habitation, and obstruction of such entry is a violation of the Act. The Act also authorizes a requirement that persons engaged in operations that may result in air pollution supply information as to the composition of the effluent, source of emission and rate of discharge. However, secret processes, formulae and methods may not be required (§ 53-3405).

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[1] Citations refer to Tennessee Code Annotated and 1960 Cumulative Supplement, as amended through the 1959 Regular Session.

E. Local political subdivisions are authorized to enter into contracts for joint operation for the control of air pollution within their jurisdiction (§53-3407).

F. This Act does not supersede ordinances or regulations of municipalities or counties nor keep them from adopting new ordinances or regulations consistent with this Act (§53-3406).

III. Miscellaneous

Municipal corporations have full authority to prevent and remove nuisances (§6-202).

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Texas

Penal Code, Art. 695 provides:

"Whoever shall carry on any trade, business or occupation injurious to the health of those who reside in the vicinity, or suffer any substance which has that effect to remain on premises in his possession, shall be fined not less than ten nor more than one hundred dollars. Each day is a separate offense."

Civil Stat. Art. 1072 provides:

"The city council may take such measures as they may deem effectual . . . to abate all nuisances of every description which are or may become injurious to the public health, in any manner that they deem expedient; and from time to time to do all acts, which they deem expedient; to preserve health and suppress disease in the city."

Civil Stat. Art. 1015 provides:

"The governing body (of a city, town or village) shall also have power:

* * *

"(1) To abate and remove nuisances and to punish the authors thereof by fine, and to define and declare what shall be nuisances and authorize and direct the summary abatement thereof; and to abate all nuisances which may injure or affect the public health or comfort in any manner they may deem expedient."

Civil Stat. Art. 1146 provides:

"The board of aldermen (of towns and villages) shall:

* * *

"(4) Prevent as far as practicable, any nuisances within the limits of the corporation, and cause such as exist to be removed at the expense of the person by whom they were occasioned or upon whose property they may be found."

Civil Stat. Art. 1175 provides:

"Cities adopting the charter or amendment hereunder shall have full power of local self-government and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

* * *

"(19) Each city shall have the power to define all nuisances and prohibit the same within the city and outside the city limits for a distance of five thousand feet...

* * *

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[1] Citations refer to Vernon's Annotated Texas Statutes.

"(34) To enforce all ordinances necessary to protect health, life and property and to prevent and summarily abate and remove all nuisances . . ."

* * *

Civil Stat. Art. 4421 provides:

"The members of said (State) Board of Health and its officers are severally authorized to administer oaths and to summon witnesses and compel their attendance in all matters proper for said board to investigate, such as the determination of nuisances . . . The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of the provisions of this (health boards and laws) chapter." Punishment by the district court for contempt of the lawful authority of the board is provided.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Utah

Section 10-8-60 provides:

"They (all cities) may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist."

Section 10-6-101 provides:

"The mayor of cities of the first and second class (adopting the strong mayor form of government) may, with the approval of the board of commissioners, designate and regulate the abatement of injurious and noxious weeds, garbage, refuse or any unsightly or deleterious objects or structures, and may appoint a city inspector for the purpose of carrying out the provisions of this section."

Section 26-5-5 provides:

"Each local board of health shall cause every nuisance dangerous to health or human life to be abated. When complaint of such nuisance is made to it, it shall forthwith cause the matter to be investigated and shall determine whether or not the alleged nuisance is detrimental to the public health or the cause of any disease or mortality.

"Whenever a local board of health shall determine that a nuisance detrimental to health exists it shall in writing notify the occupant of the premises where the same may be found or, if unoccupied, the owner or agent thereof of such finding and shall order the abatement or removal of such nuisance within two days. If such nuisance is not abated or removed pursuant to such order, the board may summarily proceed to abate or remove the same, or it may cause an action to be brought in the name of the State by the county attorney for the abatement of such nuisance."

Section 76-43-1 provides:

"Whatever is dangerous to human life or health, and whatever renders . . . air . . . impure or unwholesome are declared to be nuisances and to be illegal, and every person, either owner, agent or occupant, having aided in creating or contributing to the same, or who may support, continue or retain any of them, is guilty of a misdemeanor."

Under this section the right to recover damages for injuries occasioned by fumes, gases, dust, smoke, foul air, and obnoxious odors, being cast upon one's property by another, in proper cases, is well established. But the rule of liability is not absolute and the law does not afford redress for every such discomfort or annoyance. Extreme rights in this regard cannot be enforced. An oil refinery reasonably operated in a location suitable therefor is not liable for inconvenience resulting to householder in neighborhood because of disagreeable odors.

Under section 26-15-4 (12) of the Public Health Code, the State Department of Health is authorized to establish and maintain chemical laboratory and engineering facilities to meet the needs for conducting field investigations and laboratory analyses in the study of occupational health hazards and air pollution.

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[1] Citations refer to Utah Code Annotated 1953

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Vermont

T. 18 § 109 provides:

"In its discretion the (State Health Commission) may exercise all the powers and authority in each town and village, which is given to a local board of health. The commissioner may likewise exercise all the power and authority of a local health officer throughout the State."

T. 18 § 606 provides:

"The (local) health officer shall make sanitary inspections when and where he has reason to suspect that anything exists which may be detrimental to the public health. He may enter any house or other building or place for the purpose of making such inspections. By written order he shall direct the destruction or removal within a specified time of unhealthful conditions or causes of sickness . . ."

T. 18 § 609 provides:

"A person who neglects or refuses to comply with a written order of a local board of health or health officer issued under this chapter, when no other penalty is provided, shall be fined not more than $100.00 nor less than $5.00. Upon such neglect or refusal, the local board of health may prevent, remove or destroy any unhealthy conditions or causes of sickness, at the expense of the town it represents, and such expense may be recovered of the person whose legal duty it was to comply with such order."

T. 18 § 610 provides:

"A local board of health shall have power and authority to abate nuisances affecting the public health, destroy, prevent or remove unhealthful conditions and causes of sickness . . ."

T. 18 § 615 provides:

"A health officer shall not order the cessation or removal of conditions creating causes of sickness . . . except with the consent and approval of the selectmen of such town or the city council of such city . . ."

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[1] Citations refer to Vermont Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1/]

Virginia

Section 48-1 provides:

"When complaint is made to the circuit court of any county, or the corporation court of any city of this State, by five or more citizens of any county, city or town, setting forth the existence of a public or common nuisance, the court, or the judge thereof in vacation, shall summon a special grand jury, in the mode provided by law, to the next term of such court, to specially investigate such complaint."

Section 48-2 provides:

"If upon a full investigation of the complaint mentioned in the preceding section the grand jury is satisfied that the nuisance complained of is of a public nature, it shall proceed to make presentment against such person or persons as they may find have created or caused such nuisance."

Section 48-3 provides:

"If any such nuisance be upon premises the owner of which did not create or cause such nuisance, but permitted its continuation, such owner shall for the purposes of this chapter, be deemed responsible for such nuisance, and if such owner be not a resident or citizen of this State, or one whose residence is not known, such presentment shall be against the premises upon which such nuisance is."

Section 48-4 provides:

"Upon any such presentment the court shall order a copy thereof to be served upon the person or persons presented, or whose property is presented, in the manner prescribed by law as to the service of notices. To any such proceeding, if it be in rem, any person interested, or for and in behalf of the owner of such premises, may make defense."

Section 48-5 provides:

"Upon the trial of any such presentment the person or persons who have created, caused or permitted the continuation of such nuisance, if found guilty, shall be fined, in the discretion of the jury, not more than five thousand dollars; and upon such verdict the judgment of the court shall be for the amount of fine imposed and the costs of such proceeding and also that such nuisance be forthwith removed and abated."

Section 48-6 provides:

"Every judgment in rem under this chapter shall be enforced in the same manner as an attachment levied on real estate."

[1/] Citations refer to Code of Virginia 1950 and Supplement.

Section 15-6 provides:

"Every city and town may:

* * *

"(5) Prevent injury or annoyance from anything dangerous, offensive or unhealthy and cause any nuisance to be abated . . .

"The (State) Board (of Health) may make separate orders and rules to meet any emergency, not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public . . ."

Section 32-44 provides:

"Every . . . (local) health officer, or secretary acting as such health officer, shall have power to enter and inspect both public and private premises where he has reason to suppose any nuisance . . . exists, when the protection of the public health demands it."

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Virgin Islands

The Department of Health is required to conduct a program in environmental sanitation, to exercise general control over the enforcement of laws and regulations relating to the health of the people of the Virgin Islands, to maintain public health standards which it deems necessary, to prolong the life span of the people, and to recommend rules and regulations governing preventive programs (§ 3:418).

A public nuisance is defined as anything which is injurious to health, indecent, offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a considerable number of persons. Maintaining a public nuisance or failure to remove such when legally required to do so is punishable by a fine not exceeding $200, or imprisonment for not more than 1 year, or both (§§ 14:1461 and 1462).

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[1] Citations refer to Virgin Islands Code Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Washington

1. Air Pollution Control Act of 1957

I. General Statement

A. The Washington Air Pollution Control Act of 1957 states that "it is necessary to the health, safety, and welfare of the people of the State to provide means for control and prevention of air pollution" and declares the public policy of the State "to maintain the highest practical standards of purity of the air in order to promote public enjoyment of the State's natural scenic and outdoor recreational resources, to foster and develop public health, and to facilitate the growth of desirable natural and agricultural plant and animal life, all consistent with maximum enjoyment and full industrial development of the State." (§70.94.010)

The Act recognizes that problems of air pollution control and prevention are regional in nature and declares it the purpose of the chapter to "provide for creation of separate districts to control and prevent air pollution in each area where it may exist or is likely to occur." (§70.94.020)

B. "Air pollution" is defined as "the presence in the outdoor atmosphere of substances put there by man in concentration sufficient to cause an unreasonable interference with the comfort, safety, or health of man; or the reasonable use and enjoyment of his property." (§70.94.030)

C. The Act provides that, except where specified in a variance permit, it is unlawful for any person knowingly to cause or permit to be caused air pollution in violation of its provisions or of provisions of any ordinance, resolution, rule or regulation validly promulgated thereunder. (§70.94.040)

D. Summary of provisions

Chapter 70.94, the Air Pollution Control District Act, gives cities, towns, counties or specially-created "air pollution control districts" considerable power in preventing or controlling air pollution.

In controlling air pollution a city, town or county may take unilateral action or may join with any other city, town or county to form a district for the control of air pollution. The district when formed is deemed a political corporate body. It is given the usual powers of a municipal corporation and, if authorized by popular vote, may levy district taxes against real and personal property in the district.

The city, town, county or district, for the purpose of controlling and preventing air pollution, may consult with other bodies and political subdivisions, conduct studies and research relating to air pollution, and receive moneys from any source for the study, dissemination of educational information and control and prevention of air pollution. The political body may pass ordinances, resolutions or rules and regulations pertaining to the control or prevention of air pollution. These enactments shall have the effect of a statute of the State within the district. A violation of such an enactment may be enjoined in a civil action brought by the prosecuting attorney of the county in which the violation occurred.

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[1] Citations refer to Revised Code of Washington Annotated.

II. Administrative Organization

A. Conditions precedent to obtaining jurisdiction

1. Cities, towns and counties

After tests and surveys, in which the director of health may cooperate, to determine the purity of air within its jurisdiction and after a public hearing in accordance with RCW 42.23, held after 10 days' notice, the governing body of a city, town or county may by resolution declare the necessity of controlling air pollution and may then adopt and enforce ordinances or resolutions for such control within its jurisdiction (§70.94.050).

2. Districts

An air pollution control district may be formed by the joining together of any cities, towns or counties pursuant to ordinance or resolution adopted after hearing as provided above (§70.94.060).

3. Control officer

Any city, town, county or district which has adopted an ordinance for control and prevention of air pollution may appoint a "control officer" who is charged with enforcement of the act and the local air pollution control ordinances and regulations (§70.94.170).

B. Air Pollution Control Districts

1. Formation

(a) The ordinances and resolutions of cities, towns and counties forming a district are to specify the name of the district and participating political bodies; the district's principal place of business; the territory included within it; the period of time for which it is to operate; the effective date when the district is to begin to transact business and exercise its powers, and may specify the method of financing the air pollution control program.

(b) The district may begin to exercise its powers from the date of filing with the secretary of state a certified copy of the ordinance or resolution calling for the formation of the district, or from the date specified in such ordinance or resolution, whichever is later (§70.94.070).

2. Governing body

(a) Membership

(1) The governing body of each district is known as the board of directors and consists of an appointee of the city selection committee of each county and one county commissioner from each county to be designated by the board of county commissioners of each county included in a district (§70.94.100).

a. Each county included within the district is required to have a separate city selection committee, the membership of which consists of the mayor of each city and town within such county. A majority of the members of the committee constitute a quorum (§70.94.110).

b. The city selection committee of each county which is included within a district is required to meet within one month after the creation of such district to make its initial appointment to the board and thereafter whenever necessary to make succeeding appointments (§70.94.120).

(2) In a district formed of a combination of cities or towns only, the board consists of one appointee, of each town or city included in such district (§70.94.100).

(3) If the board would consist of an even number, the members agree upon and elect an additional member from the governing body of one of the towns, cities or counties comprising the district or a private citizen residing in the district (§70.94.100).

(4) Board members hold office at the pleasure of the appointing body (§70.94.100).

(b) A majority of the board constitutes a quorum for the transaction of business (§70.94.130).

(c) The board elects from its members a chairman and other necessary members (§70.94.130).

(d) Each member of the board receives from the district $25 per day (but not to exceed $1000 per year) for each full day spent in performance of his duties under this Act, plus the actual and necessary expenses incurred by him in such performance (§70.94.130).

3. Powers and Duties

(a) A district is a political corporate body and has all rights, powers and duties thereof (§70.94.080).

(b) Any city, town, county or district may, for the purposes of controlling and preventing air pollution:

(1) Advise, consult, cooperate and contract with other agencies and educational institutions of the State, political subdivisions, industries, other States, the Federal Government, or other affected groups and individuals.

(2) Encourage and conduct studies, investigations and research relating to air pollution, its causes, control and prevention.

(3) Receive monies from any source and use and disburse such funds for the study, dissemination of educational information, and control and prevention of air pollution.

(4) Develop a comprehensive plan and program for the prevention and control of all new and existing sources of air pollution within its jurisdiction (§70.94.140).

(5) Through ordinances, resolutions, or rules and regulations adopted after consideration at a public hearing in accordance with RCW 42.32 of which there has been 10 days' notice, specify the particular properties, types, names, or rates of discharge, of solids, liquids or gases. or combinations thereof, and the locations, circumstances, conditions or times that their discharge into the air will cause air pollution or make it likely to occur (§70.94.150).

(6) In determining what causes air pollution or will make it likely to occur, the governing body of each such city, town, county or district is required to take into consideration all of the facts and circumstances bearing upon the reasonableness of the activities involved and the regulations proposed to control it, including:

a. The character and degree of injury to, or interference with, comfort, safety, health, or the reasonable use and enjoyment of property which is caused or threatened to be caused;

b. The social and economic value of the activity involved;

c. The suitability or unsuitability of such activity to the area in which it is located; and

d. The practicability, both scientific and economic, of reducing or eliminating the discharge resulting from such activity (§70.94.150).

(e) The board

(1) Exercises all powers of the district except as otherwise provided (§ 70.94.130).

(2) May appoint an executive secretary, a control officer, and any other personnel, and is required to determine their salaries and pay them, together with any other proper indebtedness, from district funds (§70.94.130).

4. Financing

(a) At the time of making general tax levies in each year, the board of county commissioners levies taxes required for districts' purposes against the real and personal property in the district in accordance with the equalized valuation thereof for general tax purposes. Such levies are part of the general tax roll and are collected as part of the general taxes against the property in the district. The treasurers of the counties within the district pay into the appropriate district treasury all funds held by them to the credit of the district. The board designates the treasurer of a county within the district to have custody of the district treasury (§70.94.080).

(b) Upon an affirmative vote of 3/5 of those voting at a general or special election and provided not fewer than 40 per cent of the voters in a city, town, county or district who voted at the last preceding general state election participate, such city, town, county or district may levy a tax on all taxable property in accordance with development of a comprehensive plan and program for the prevention and control of all new and existing sources of air pollution within its jurisdiction in an amount and for a period as may be authorized (§70.94.090).

5. Dissolution

A district may be dissolved prior to the term provided in the agreement by the participating cities, towns, and counties upon adoption by the board, after a hearing held upon 10 days' notice, of a resolution to that effect and the approval of the governing body of each city or town and the Board of County Commissioners of each county comprising the district (§70.94.260).

III. Procedures

A. A control officer or his duly authorized representative has the power to enter at reasonable times upon any private or public property, except private dwellings housing four families or fewer, to investigate conditions relating to air pollution. The results of such investigation are confidential and may not be disclosed without the written consent of the parties (§70.94.200).

B. A person believed by a control officer to be violating any provision of the Act or any valid ordinance, resolution, rule or regulation relating to the control or prevention of air pollution, must be notified by the officer by registered mail (§70.94.210).

C. Within 15 days from the receipt of such notice, the person is to file with the control officer a full report stating what steps have been and are being taken to control or prevent the alleged air pollution (§70.94.210).

D. The control officer may then submit by registered mail to the person affected an order setting forth the particulars wherein such person is failing to comply with such ordinance, resolution, rule or regulation and sending an order by registered mail to such person to remedy such failure within a stated time (§70.94.210).

E. Upon petition filed within 15 days from receipt of such order a hearing must be granted by the governing body of the city, town, county or board to any person aggrieved by the order. Following the hearing the governing body or board enters its order affirming, reversing, or modifiying the order of the control officer. If not appealed from the order is final (§70.94.220).

F. Appeal may be taken by filing a petition in the superior court of the county in which the violation allegedly occured within 15 days after the order of the governing body or board. Such order is subject to review and trial de novo as a cause in equity (§70.94.220).

G. Unless, after notice and hearing, the superior court determines an emergency exists requiring that the order be in effect during the pendency of the appeal, the order is stayed until final determination of the appeal (§70.94.220).

IV. Violations and Penalties

Ordinances of cities or towns pertaining to control and prevention of air pollution are enforced in the same manner as other similar ordinances and regulations of a county and valid rules and regulations of a district pertaining thereto have within the jurisdiction of the county or district the force and effect of a State statute. A violation of either, not permitted by an existing variance order, may be enjoined in a civil action brought in the name of the State of Washington by the prosecuting attorney of the county in which the violation occured (§70.94.160).

V. Variances

A. Hearing

The governing body of a city, town or county, or the board of a district, on its own motion may, or upon petition of an interested person shall hold a hearing upon 10 days' notice to the petitioner and the control officer to determine to what extent, if any, and under what conditions a variance from the requirements established by statute or by any ordinance, resolution, rules and regulations, or order of a city or town, county or district is necessary and will be permitted (§70.94.180).

B. Granting of variance

1. If the governing body or board finds that because of conditions beyond control, compliance with requirements established by statute or with the resolutions, rules, and regulations or orders of the governing body or board would result in an arbitrary and unreasonable taking of property, or in the practical closing or elimination of any lawful business, occupation, or activity, in either case without sufficient corresponding benefit or advantage to the public in the control or prevention of air pollution, it is to prescribe other and different requirements applicable to plants and equipment operated by named classes of industries or persons or separate persons (§70.94.180).

2. In determining under what conditions and to what extent a variance is necessary and will be permitted, the body or court hearing the petition is to exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the area and to any lawful business, occupation or activity involved resulting from requiring compliance with the specified requirements or resulting from granting a variance (§70.94.190).

C. Revocation of variance order

In the event of a change in conditions, resulting in a substantial change in the equities involved and in the advantages and disadvantages existing at the time of granting a variance, the governing body may revoke or modify the order permitting the variance by written order after a public hearing held upon 30 days' notice to the persons or classes affected (§70.94.190).

VI. Air Pollution Control Advisory Council

The governing body of any city, town or county appointing a control officer, or the board of any district, is required to appoint an air pollution control advisory council to advise and consult with such body or board, and the control officer in effectuating the purposes of the law (§70.94.240).

VII. Scope and Construction

A. The regulations adopted by a district under this chapter supersede all rules and regulations of the component parts of a district relating to control and enforcement of air pollution but they are not to be construed to supersede any local county or city ordinance or resolution or any provision of the statutory or common law pertaining to nuisance, or to affect any aspect of an employer-employee relationship (§70.94.230).

B. This act does not apply to fires set or authorized by a public officer or county agricultural agent for certain purposes in pursuance of their official duties (§70.94.250).

VIII. Separability

Provision is made for separability (§70.94.270).

IX. The provisions of this Act became effective at midnight June 13, 1957.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Washington

2. State Air Pollution Control Board

I. General Statement

In 1961 the Washington Air Pollution Control Act of 1957 (see pp. 118-123) was amended to provide for a program of research and cooperative activity to be conducted by the State Director of Health with the approval of the Board. The program is stated to be an "interim" one. (Sec. 70.94.350)

II. Air Pollution Control Board

A. Organization

The air pollution control board is established in the Department of Health. The chairman is the State Director of Health, ex officio. Eight additional members are appointed by the Governor: one public member; one representating the majority of workmen; one from the University of Washington or Washington State University, in turn; two representing Washington cities and county commissioners; one agricultural representative; and two industry representatives.

Members are appointed for 4-year staggered terms, and five members constitute a quorum. (Sec. 70.94.300)

B. The board is to meet at least once every three months. Members receive only actual expenses while serving (70.94.310-.320).

III. Powers and Duties of Director of Health

A. The director of health, with the approval of the board, is to:

1. Conduct research, investigations, tests, and surveys to determine the nature and extent of air pollution, and to relate the proportion of emissions to various sources, such as residences, industry, agriculture, etc.
2. Formulate and recommend ambient air quality standards for pollutants which would constitute either a health hazard, economic damage or nuisance, and to delineate natural air basis where an air pollution problem is indicated.
3. Recommend standards for uniform control based on known, available, and reasonable methods.
4. Take into consideration in all recommendations the character and degree of injury, threatened or potential; the social and economic value of the activity involved; the suitability of the activity to the area; the scientific and economic practicability of corrective measures. (Sec. 70.94.330)

B. Reports

Quarterly reports issued by the director of health, with the approval of the Board, are to be distributed to the legislative council and interested persons including local governments. Results of special tests and studies may be furnished affected governmental entities with Board approval (Sec. 70.94.340).

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[1] Citations are to Revised Code of Washington Annotated, 1962 Cumulative Pocket Part.

C. Contracts

The director of health is authorized to contract for, or otherwise obtain personnel from municipal corporations or private agencies (Sec. 70.94.350).

D. Inspections

The State Board, the director of health or their agents are authorized to enter on private property in carrying out the Act, but the results of any investigations may not be disclosed without the written consent of affected parties. (Sec. 70.94.360)

E. Savings clause

The Act does not affect authorities granted under the 1957 statute, or the powers of other State agencies under specific provisions of law (Sec. 70.94.380).

F. Penalties

The violation of any provision of the 1957 Act as amended by the 1961 Act, or of any rule, regulation or order issued thereunder is declared to be a misdemeanor. (Sec. 70.94.500)

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

West Virginia

I. General Statement

A. Summary

In 1961 West Virginia enacted a State-wide air pollution control statute and established an Air Pollution Control Commission to administer the Act. The public policy of the State is declared to be the maintenance of such reasonable degree of purity of the air as is "technically feasible, economically reasonable and necessary for the protection of the normal health, the general welfare and the property of the people of the State" by measures which "shall not unreasonably obstruct the attraction development and expansion of business, industry and commerce within the State." The powers of the Commission are to be exercised solely to effectuate this policy (Sec. 1409(128)).

The statute makes it unlawful to "cause a statutory air pollution" (see definitions below). (Sec. 1409(130))

B. Definitions

"Air Pollutants" means "solids, liquids or gases which, if discharged into the air will result in a statutory air pollution."

"Discharge" means "any continuous or regular release, escape or emission of air pollutants into the air."

"Statutory air pollution" is "limited to the discharge into the air by act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be unreasonably and materially injurious to human, animal or plant life or to property." (Sec. 1409(129))

II. Administrative Organization--Air Pollution Control Commission

A. Composition and Organization

The Commission is established as an agency of the State and consists of five members--the State Health Director and Commissioner of Agriculture ex officio, and three members appointed by the Governor, with the advice and consent of the Senate, for four-year terms, two of whom "shall be truly representative of industries engaged in business" in the State. Members receive no salary but are to be reimbursed for actual and necessary expenses.

The chairman, elected from the members of the Commission, and a secretary, appointed by the Commission, serve for a fiscal year. The Commission is authorized to hire necessary personnel and fix their compensation, to establish rules for the conduct of its proceedings. (Sec. 1409(131))

B. Powers and Duties

The Commission is authorized:

1. To develop ways and means to control air pollution.

2. To consult and cooperate with public and private agencies and groups, and to

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[1] Citations are to West Virginia Code of 1961 Annotated

encourage voluntary cooperative action to preserve air purity.

3. To encourage and conduct research and studies.

4. To adopt and promulgate reasonable regulations which may not specify the design of equipment, type of construction or particular method to be used to reduce the discharge of air pollutants.

5. To conduct enforcement activities, and enter orders requiring compliance with the statute and regulations.

6. To enter private or public property to investigate violations, but such investigation may not extend to secret processes or methods.

7. To give public notice of imminent and serious public health hazards resulting from a violation of the statute.

8. To accept and spend money from the Federal Government and other sources and to represent the State in negotiating interstate air pollution control compacts.

9. To appoint technical advisory councils for various areas of the State.

Regulations may be adopted only after publication of a 30-day notice of public hearing. The proceedings at the hearing are to be recorded and views may be presented orally or in writing. (Sec. 1409(132))

III. Enforcement Procedures

A. Administrative Hearing

If, upon the basis of its investigation or a complaint, the Commission believes there may be a violation of the law, it may give 30 days' written notice to the violator to show cause why an order should not be entered regulating or controlling the pollution described in the notice.

The Commission is directed to consider all pertinent factors, including a balancing of the conflicting interests and equities involved, the availability and practicality of control devices, the physical and economic feasibility of control measures, the nature of the locality affected, and the reasonableness of existing conditions. Upon the basis of evidence at the hearing, the Commission is to enter an order to promote the declared policy of the statute, and fixing a reasonable period to correct the statutory air pollution, if any, is found. Within 20 days after service of the order, any person substantially affected thereby may file a written petition to modify or vacate the order. The Commission shall within 20 days file an order confirming, modifying or vacating the original order. An order becomes final and conclusive unless judicial review is sought. (See III C). (Sec. 1409(133))

B. Emergencies

Whenever the Commission finds that air pollution conditions in any area create an emergency and require immediate action for the protection of the public health, it may, with the approval of the Governor, issue an order to reduce or prevent emissions contributing to such conditions and giving notice of a hearing to be held within 24 hours. Upon the evidence at the hearing, the Commission within 24 hours thereafter shall affirm, modify or set aside the order. (Sec. 1409(137))

C. Judicial review

Any person substantially affected by a Commission Order may within 30 days from the service of the Order file a written notice of appeal from such order with the Commission. The Commission shall forward to the appellant within 30 days of the filing a copy of the full transcript of the proceedings, and of all orders, etc., therein and shall also file such documents with the Clerk of the circuit court of the county where the alleged pollution originated. The court is directed to hear the appeal without a jury upon the basis of the transcript and such additional evidence as may be presented by the Commission or any affected person. The court may affirm, modify or set the order aside in whole or in part, and shall fix a reasonable period to correct pollution found to exist. An appeal may be taken from the circuit court order to the Supreme Court of Appeals by any party affected by the order.

An appeal stays the order appealed from pending final determination of the case. (Sec. 1409(134))

IV. Penalties and Injunctive Relief

A. A violation of a Commission order is punishable by a penalty of not more than $100 a day for each day the violation continues. Suit to enforce the penalty may be brought in a circuit court of the county where the person resides or is engaged in the activity complained of. The amount of the penalty is fixed by the court without a jury.

B. In the absence of reasonable progress toward correction, the Commission may seek an injunction in the appropriate circuit court to restrain violations of a final order. (Sec. 1409 (135), (136))

V. Miscellaneous

A. Other air pollution control authorities repealed

All other statutes or parts of statutes applicable to air pollution control or inconsistent with this Act, including statutes relating to State and local health boards and political subdivisions, are repealed except that municipal air pollution control ordinances adopted prior to the enactment of the statute are continued in effect. (Sec. 1409(138))

B. Effective Date

1. Rules and regulations become effective one year after effective date of statute. (Sec. 1409(130))
2. Statute becomes effective June 6, 1961.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Wisconsin

Chapter 508, Laws of 1961, (approved September 20, 1961) adds section 59.07(85) to the Wisconsin statutes to authorize county boards to control and abate air pollution. The boards are authorized to:

1. Regulate by ordinance the emission, within their territorial jurisdiction, of smoke, liquids, gases, solids, etc., including radioactive material, from any source.
2. Prescribe rules, regulations, and standards governing processes, control equipment and devices, and the application of fuels and raw materials to equipment and processes.
3. Prescribe fees for examination of plans, inspections, tests, issuance of permits and certificates of operation.
4. Provide for an appeal board and an advisory board.
5. Prescribe penalties for violation of the ordinance.
6. Provide for suits to enjoin violations of the ordinance.
7. Provide for a county department of air pollution control.

Such ordinances shall not supersede any town, village or city ordinance heretofore or hereafter enacted which is at least equally restrictive.

Note:

In Red Owl Stores, Inc. v. Milwaukee County and John E. Brown (No. 294-839), the Circuit Court of Milwaukee County by its decision dated June 28, 1961, held that section 59.07 (53) of the Wisconsin statutes violated the state constitutional requirement of uniform county government because it limited the authorities there described relating to air pollution control to counties having a population of 500,000 or more. It also held invalid the Milwaukee ordinance enacted pursuant to the authority of section 59.07(53).

Section 59.07(85) is applicable to all counties and contains the same authorities as those contained in 59.07(53).

2. Tax Benefits for Air Pollution Abatement Equipment

Real and personal property purchased, constructed and installed upon recommendation or order of a city council, a village board or county board pursuant to § 59.07 (53) to control air pollution shall be exempt from local taxation for five years, unless the use of the property creates net income before personal and real property tax for any of these five years (§ 70.11 (21)).

In addition, in lieu of depreciation, the owner may elect an accelerated amortization deduction for such property computed on an estimated life of 60 months (§§ 71.04(2b) 71.05(2b)).

Procedures for claiming and establishing these benefits are set forth in the statute.

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[1] Citations in this digest refer to the Wisconsin Statutes Annotated.

DIGEST OF STATE AIR POLLUTION CONTROL LAWS [1]

Wyoming

Cities of the first class have the power to define, declare, abate and remove nuisances and impose penalties on offenders (§15-106). The town councils of incorporated towns have the power to declare, prevent, abate and remove nuisances and take such additional measures for the public health as they deem necessary (§15-160, sixth).

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[1] Citations in this digest refer to Wyoming Statutes 1957.

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